85-292

No

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term 1985

THOMAS G. BECKHAM,

Petitioner

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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August 19, 1985

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QUESTION PRESENTED

Did the Court of Appeals exceed its authority under the Seventh Amendment to the United States Constitution and under Rule 50, F.R.Civ.P., by reversing a jury verdict which was based on the jury's estimation of the credibility of witnesses?[1]

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[1]Besides this case, two other cases from the Fourth Circuit will be bought before the Supreme Court on Petitions for Writ of Certiorari presenting the same question. These cases are Owens v. Bourns, Inc., 83-2059 (June 27, 1985) (Published); and Redic v. Gary H. Watts Realty Company, 762 F.2d 1181 (4th Cir. 1985).

Petitioner asks that this petition be combined for consideration with the petitions to be filed in the cases just mentioned, all of which question the Fourth Circuit's consistent refusal to restrict its review to errors of law.

PARTIES

The parties to this proceeding are petitioner Thomas G. Beckham, and respondents J. Gordon Harris, Horace Jordan, Winfred Gore, Elton Johnson, Bobby Johnson, J.D. Flowers, Joshua Vaught, Worth Lee, A.B. Grainger, Bill Ward, Harold Rogers and James O. Dunn.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

THOMAS G. BECKHAM, Petitioner

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner Thomas G. Beckham respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this preceeding on March 13, 1985.

OPINION BELOW

The decision of the court of appeals is reported at 756 F.2d 1032 and is set out at pages 1a-24a of Appendix A to this petition. There was no opinion of the district court, but portions of the trial record are set out in Appendix D at pages 29a-78a.

JURISDICTION

The judgment of the court of appeals was entered on March 13, 1985. Petitioner's petition for rehearing was denied on April 22, 1985. (Appendix B at 25a). Petitioner's application for an extension of time to file this petition was granted until August 19, 1985. (Appendix C at 27a). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1982).

CONSTITUTIONAL PROVISION, STATUTE, ACT, AND RULE INVOLVED

(Reprinted in Appendix G at 105a).

Seventh Amendment, United States Constitution.

The Federal Civil Rights Act: 42 U.S.C. § 1983 (1982).

Rule 50, Federal Rules of Civil Procedure.

Act No. 21 of the South Carolina General Assembly (1959).

STATEMENT OF THE CASE

Petitioner was a police officer with the police department of Horry County, South Carolina. He was fired without a hearing. For two days following his firing, false newspaper accounts of the affair were published. Petitioner sued under 42 U.S.C. §1983 (1982) for deprivation of his property and liberty interests. Following a trial from November 28 to December 2, 1983, the

jury returned a verdict for him on both counts.

The trial judge refused to set aside the verdict and the Defendants appealed. The Fourth Circuit Court of Appeals independently reviewed the evidence, and reversed the case because it took a view of the evidence that was different from that of the jury.

The Petitioner recognizes that his petition asks the Supreme Court to review a fact-bound case. The present case, however, is only one of a high percentage of cases out of the Fourth Circuit in which that court of appeals has stepped in and reversed decisions based on credibility issues resolved by a jury. A brief list of the published decisions evidencing this tendency is included in Appendix H at 107a. This practice of the Fourth Circuit has created an uncertainty and disturbance in federal

litigation in this circuit that goes far beyond the facts of this case.

Many facts in this case are disputed. The presentation that follows is supported by reference to the portions of the trial record in Appendix D.

Plaintiff Beckham joined the Horry County Police Department in July of 1979. (App. D at 29a). He was transferred from the uniformed division to the undercover Narcotics Division on January 2, 1981. (App. D at29a). Up to this time, Beckham had very limited experience in undercover work. (App. D. at 31a). He was assigned to work with Mike Foreman, an officer with eight (8) months' experience in the Narcotics Division. (App. D at 73a). Foreman was his senior officer and supervisor as well as his partner. (App. D at 31a, 73a, 78a).

Soon after Beckham took up his duties as a narcotics officer, he was

assigned to a drug investigation that eventually centered on the Ship's Wheel Seafood House in North Myrtle Beach, South Carolina. (App. D at 31a-37a). The Drug Enforcement Administration had alerted Foreman and Beckham that police officers were involved in the smuggling. (App. D at 37a, 57a). That tip was corroborated to Beckham by a highway patrolman.[2] (App. D at 57a). Foreman and Beckham established a surveillance of the Ship's Wheel, where drugs were stored, according to their information. (App. D at 39a). During the stake-out, Foreman and Beckham learned that the details of their investigation indeed had been

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[2]Events have shown this information had a basis. See, Informations 85-159 and 85-160 and accompanying plea agreements of and pertaining to Horry County Police Officers W.J. "Pete" Bellamy and Hyson Ellis Bellamy, filed August 1, 1985 in the United States District Court in South Carolina.

revealed to drug dealers by local police officers. (App. D at 39a-40a).

Foreman left the surveillance to obtain a search warrant and Beckham moved to a position in the woods behind the restaurant. (App. D at 40a-41a). Some time later, Foreman returned and called Beckham by radio to a rendezvous. (App. D at 41a). He told Beckham he had seen Jerry High driving a silver van and appearing to leave the Ship's Wheel. (App. D at 42a).

Acting upon the search warrant obtained by Foreman, the officers entered a cooler behind the Ship's Wheel and found about 3,000 pounds of marijuana stored there. (App. D at 42a). Foreman called for assistance from the County Police and from the City of North Myrtle Beach Police. (App. D at 43a). As officers arrived, Foreman began to tell them about the suspected armed drug dealers. (App. D at 44a).

Foreman went on to tell the other officers a van had left the parking lot at a dangerous speed just as he had arrived. (App. D at 44a). He elaborated by stating there had been Cubans "running all over the parking lot." (App. D at 44a).

Although Beckham had not been present at the parking lot when Foreman arrived, he did not accept this part of the story and questioned Foreman. (App. D at 45a). Foreman told Beckham it was an attempt to "smoke these people out" and told Beckham to go along with it. (App. D at 45a). Beckham followed Foreman's orders. (App. D at 46a-47a).

Immediately thereafter, officers found the silver van Foreman had seen and detained those in it, one of whom was Jerry High. (App. D at 49a). Foreman and Beckham rode back to the county jail together. During that ride, Foreman again told Beckham to go

along with Foreman's story. (App. D at 49a-50a).

Once the van was secured at the county jail, Foreman received orders to search it. (App. D at 50a). Beckham just had the door of the van open when Solicitor Dunn intervened and told Beckham to come over to his office and prepare a search warrant for the van. (App. D at 50a-51a). Beckham found Foreman, and they went to Dunn's office. (App. D at 51a).

Foreman told Dunn the story he had told the officers at the Ship's Wheel. (App. D at 51a-52a). Then he took Beckham aside and told him to go along with it. (App. D at 52a) Foreman promised he would straighten it out as soon as they could reach Chief Harris. (App. D at 52a). Beckham, however, refused to confirm Foreman's story (App. D at 52a), although he was convinced Foreman was correct about the involvement of police

officers in the smuggling. (App. D at 52a-53a).

After Foreman told his story to Dunn, Foreman departed and left Beckham to see to the wording of the affidavit. (App. D at 52a). Beckham did not allow the affidavit to contain the incorrect information about the van leaving the parking lot. (App. D at 53a-54a). Instead, Beckham restricted his assertions about the van to the correct information that Foreman saw Jerry High at the Ship's Wheel driving a silver Dodge van. (App. D at 53a-54a).

The next day, Beckham again pressed Foreman on Foreman's plan to smoke out the officers. (App. D at 54a-55a). Foreman suggested they prepare a dummy incident report loaded with facts that would purport to show a very strong case against the smugglers. (App. D at 54a-55a). The official incident report listed only the

information provided by D.E.A. (App. D at 55a-56a).

Foreman planned to leave the dummy incident report on their desk so that anyone prowling in the office who saw it might be frightened into getting out, quitting, or resigning. (App. D at 55a, 74a-75a). They thought also that the smugglers might plea bargain and turn the officers in. (App. D at 58a-59a). By mistake, the dummy incident report became part of the official file in the case. (App. D at 56a-57a).

When the preliminary hearing was called, Foreman told the "loaded" version of the story from the witness stand. (App. D at 59a-60a). At that point, Beckham blew the whistle. He told Captain Fowler that Foreman was lying. (App. D at 60a).

At the time these events were unfolding, Chief Harris was in Washington, D.C. (App. D at 62a). He returned

immediately and questioned Beckham. (App. D at 62a-64a). Also present were Sheriff Brown, Captain Fowler, Jim Dunn and several members of the Police Commission. (App. D at 63a).

During this interrogation, Beckham told Harris that he and Foreman had been trying to smoke out corrupt police officers. (App. D at 65a). At the time of his interrogation, Beckham was upset as he had turned in his partner. (App. D at 66a). Knowing also that much of Foreman's information was untrue, Beckham stated the whole thing was untrue. (App. D at 65a-68a). Following the questioning, Beckham gave a statement. (App. D at 64a-65a). Mike Foreman gave a statement. (App. D at 65a). Shortly after that, Beckham was fired. (App. D at 65a).

Harris and Dunn called a press conference to announce that Beckham had been

fired. (App. D at 75a). The press release distributed to the media stated Beckham had been "an active participant in furnishing false information" to the Police Department. Also, Chief Harris wrote, "I will not tolerate or condone any officer who is less than truthful in the discharge of his responsibilities."

In addition, Harris and Dunn told reporter Bob Bloodworth that Beckham himself had testified falsely at the preliminary hearing. (App. D at 75a-78a).

Beckham's first opportunity to examine the affidavit with counsel convinced him that, although much of Foreman's story was false, his own affidavit was correct. (App. D at 69a). He was acquitted on all the charges brought against him. (App. D at 69a-70a).

Following his acquittal, Beckham made unrelenting efforts to obtain a full

hearing before someone in authority. (App. D at 70a-73a). These applications were made to Chief Harris and County officials. The Horry County Police Commission had been abolished on April 16, 1981; County Council took on its functions, duties, and responsibilities. All his efforts were denied.

REASONS FOR GRANTING THE WRIT

The writ should issue because the decision, though merely wrong, was very wrong indeed. In the Statement of Case, the Petitioner has noted that this is fact-based application. The Petitioner urges, however, that the Supreme Court issue the writ prayed for because the Fourth Circuit too often strays into deciding issues of credibility and reexamining the facts of a case. This practice goes against the pronouncements of the Supreme Court, the stated principles of the Fourth Circuit itself, and

encourages those meritless, fact-based appeals which the fourth circuit and other appellate courts rightly deplore.

This court noted recently that the trial on the merits should be the "main event," not merely a "tryout on the road" to the court of appeals. Anderson v. City of Bessemer City, N.C., ___ U.S. ___, ___, 105 S.Ct. 1504, 1512 (1985) (citing Wainwright v. Sykes, 433 U.S. 72,90, 97 S.Ct. 2497, 2508 (1977). Parties should not be required to spend their time and resources relitigating facts before a three-member jury composed of appellate judges. Anderson, ___ U.S. at ___, 105 S.Ct. at 1512. The Fourth Circuit has recognized that a losing party raising a factual issue must demonstrate that the evidence relied on for the factual finding can be deemed to have no significance. Gilbert v. Scratch 'N Smell, Inc., 756 F.2d 320, 321 (4th Cir.

1985) (Murnaghan, J.). That court has also stated that evidence is to be construed "in a manner most favorable" to the party who prevailed with the fact-finder. Raferty v. Scott, 756 F.2d 335, 337 (4th Cir. 1985) (Murnaghan, J.).

In the present case, however, the Fourth Circuit ignored testimony, invented facts, resolved issues of credibility, and gave no deference to the principles of appellate review it professes. The particular errors of the Fourth Circuit's decision will be set out below. When those errors are put before this Court, it will be seen that the Fourth Circuit's decision invaded the fact-finding process more grievously than the decision reversed in Anderson, supra.

Appellate review of jury verdicts under Rule 50 of the Federal Rules of Civil Procedure is more tightly reigned than review

under Rule 52, which was at issue in Anderson. United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct., 525,542 (1948). Case v. Morrisette, 475 F.2d 1300, 1306 (D.C. Cir. 1973). Facts decided by a jury may be reviewed only as to the sufficiency of the evidence. United States Constitution, Amendment VII. It is these limitations which the Fourth Circuit did not observe in its review of the present case. The wider harm invited by the Fourth Circuit's decision will be addressed in a moment; for the present this discussion turns to the decision of the Fourth Circuit in this case and the particular errors found there.

The incorrectness of this decision stands on two pillars: As to the property interest, Petitioner had none according to the Fourth Circuit. As to the liberty interest, Petitioner was his own accuser. The Fourth Circuit could not have reached

these paired conclusions without retrying the case from the appellate bench.

The Court of Appeals first that Petitioner had waived any right he might have had to a hearing. (App. A. at 17a-18a). The court's opinion does not take note of the substantial evidence supporting a non-waiver. (App. F. at 87a-93a).[3] The trial judge addressed the point in the post-trial motion hearing. (App. E at 82a-84a). Nor does the opinion recognize that this factual issue must be held to have been decided in Petitioner's favor. Thus the court of appeals ruled that Petitioner slept on his rights. (App. A at 18a).

Petitioner's employment was conditioned by a clause that a policeman

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3--Appendix F contains portions of the Petitioner's brief to the court of appeals. The excerpts reproduced there give citations to the appellate record, which is not at present before this court.

shall be allowed a hearing before termination. (Act No. 21, App. G at 106a). The trial judge instructed the jury that Petitioner was entitled to an opportunity for a pretermination hearing. It was a jury issue whether he was permitted such a hearing. Cleveland Board of Education v. Loudermill, __, U.S. __,105 S.Ct. 1487(1985) is not dissimilar in its concern for the role of due process in preventing erroneous decisions and for overly restrictive grants of property interests.

Further, on the property interest, the court of appeals ignored Petitioner's testimony that his employment with the police department was terminable only for cause. (App. D at 30a). Both Petitioner and the department understood that he could be fired only for cause. The fourth circuit's version of this testimony is that Petitioner testified it was "his understanding" that

he could be fired only for cause. (App. A at 13a, n. 7). Petitioner's actual testimony, however was that both he and the department understood that once he became a permanent employee, he would be fired only for cause. (App. D at 30a). The fourth circuit's treatment of this evidence is a subtle but devastating example of the errors that pervade the opinion.

In the same footnote referred to in the preceeding paragraph, the court of appeals states:

> Petitioner also asserts that the disciplinary guidelines found in the personnel manual create an expectation that an employee cannot be discharged except for violation of certain specified conduct. This evidence, however, does not establish that a property interest was created in Petitioner's continued employment with the police department. Moreover, the very guidelines to which Petitioner points mandate his immediate discharge,

> i.e., "Group C - First Violation may result in discharge: 1. Falsification of records or misrepresentation of material information."

The first point that is apparent is that the guidelines do not mandate dismissal at all. An officer "may" be dismissed. Further, there is nothing in the guidelines stating the dismissal must be "immediate." The mandated immediate dismissal was read into the case by the court of appeals. The court of appeals ignored the unobjected-to jury instructions which cast the policies and guidelines in the role of evidence the jury could use to find a property interest. (App. F, at 101a-103a). The court of appeals stated merely that this evidence did not establish a property interest; but that was a decision for the jury to make upon the evidence and the instructions.

The trial judge also charged the jury on the significance of the language in Act No. 21 (App. G at 106a) which states that an officer shall be allowed a hearing before termination. He defined "allow" for the jury and submitted to it the question whether Petitioner had been given the protection the Act called for. (App. F at 89a-90a). The jury's verdict shows a decision favorable to Petitioner on this factual point. The Fourth Circuit made no mention that this issue was specifically charged to the jury but merely stated it was "unpersuaded" the Act gave Petitioner a property interest. (App. A at 13a-14a).

The point should not be labored: The court of appeals simply picked the evidence it wished to rely on and either ignored or disbelieved other evidence.

Petitioner's claim of a violated liberty interest rested on his contention

that officials had falsely told the press that Petitioner had testified falsely at the preliminary hearing. The evidence supporting this claim was given from the stand by the reporter who wrote the newspaper stories. (App. D at 75a-78a). The court of appeals branded this testimony "no persuasive showing." (App. A. at 20a, n.12;24a).

In the course of its recitation of the evidence in the case, the court of appeals commits a factual error that is most telling. The court states that Petitioner attested in an affidavit to the "fictitious story that Jerry High had been seen at the Ship's Wheel Restaurant on the morning of January 21, 1983." (App. A at 7a). This statement completely distorts the record. The affidavit was not false and neither was that portion of Foreman's story. So testified the Petitioner. (App. D at 42a,

52a-54a). He had been very careful to insert into the affidavit only those facts known to him or relayed from a reliable informant. Petitioner made this point emphatically on the witness stand. (App. D. at 52a-54a). For the court of appeals to have missed or wilfully misunderstood this fact shows that no conscientious appellate review took place.

The court of appeals insisted that Petitioner was his own accuser and cited statements made by Petitioner at the time of the internal investigation following his whistle-blowing refusal to testify at the preliminary hearing. (App. A at 22a,n.14). But in order to reach that conclusion the court of appeals had to disbelieve the testimony of the reporter who wrote the stories containing the false reports of Petitioner's having given false testimony at the preliminary hearing. Belief or

disbelief of witnesses betrays an appellate court that has taken up the facts of a case for a full review. By contrast, the trial judge stated that although he might have decided the case differently, the jury had sufficient evidence to decide as it did. (App. E at 79a-81a). The harm thus caused spreads beyond this case because fact-based appeals are then everywhere encouraged. A failure to correct this decision will invite an appeal whenever a losing party thinks the Fourth Circuit might take a different view of the facts.

At the outset of this petition, the claim was made that the Fourth Circuit has been particularly active in recent years in invading the fact-finding process and refusing to restrict its function to the correction of errors of law. In an attempt to give some meat to this contention, Petitioner has collected in Appendix H (107a-

109a) a list of those cases published by the Fourth Circuit in which it appears the Fourth Circuit has undone a jury determination of fact, either by reversal or affirmance of a judgment notwithstanding the verdict by the trial judge. Only published decisions were surveyed, although unpublished decisions, too, may reverse on insufficiency of evidence. See, e.g., Washington v. Telcom, Inc., 82-1237 (June 20, 1985) (4th Cir. unpublished).

Cases appearing in 713 F.2d through the most recent Federal Reporter Advance Sheet (765 F.2d 1123) were examined to determine in which cases the Fourth Circuit was reviewing the sufficiency of the evidence to support a jury verdict. The cases are divided simply into two groups: cases finding a sufficiency of evidence and those finding the evidence insufficient to support a finding of the jury. Petitioner

believes that the rate disclosed there of 11 findings of insufficiency against 15 findings of sufficiency is strongly suggestive that the result in the case now before the court is not an aberration, but is part of a definite tendency in the Four. Circuit to force retrials on appeal. So high a rate of disagreement with jury findings would not occur if the Fourth Circuit were abiding by the principles of Appellate Review.

CONCLUSION

To correct this tendency and the erroneous decision in the present case the Petitioner asks that the writ of certiorari issue to review the judgment and decision of the Fourth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Thomas G. Beckham — Appellee

versus

J. Gordon Harris, et. al. — Appellants

OPINION

MURNAGHAN, Circuit Judge:

The present appeal arises from an action brought by Thomas G. Beckham ("Beckham"), a former narcotics detective with the Horry County South Carolina Police Department ("the police department") who was discharged by the defendant, Chief J. Gordon

Harris ("Harris"),[1] on February 28, 1981 after submitting false information in an incident report and in an affidavit used to procure search and arrest warrants. Beckham asserts that he was discharged without a pre-termination hearing in violation of his right to procedural due process secured by

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[1] Also named as defendants were George O. "Buddy" Fowler, Captain of Detectives, J. D. Flowers, Winfred Gore, A. B. Grainger, Bobby Johnson, Elton Johnson, Horace Jordon, Worth Lee, Delano Sanders, Harold Rogers, Joshua Vaught, Bill Ward, in their official capacities as Horry County Police Commission members; James O. Dunn, Solicitor of the 15th Judicial Circuit, all members of the Horry County Council at the time of Beckham's discharge, John Hatchell, County Administrator and William J. Brown, former County Administrator. Beckham ultimately recovered only against defendants Harris, Jordan, Gore, E. Johnson, B. Johnson, Flowers, Vaught, Lee, Grainger, Ward and Rogers, members of the Horry County Police Commission and James O. Dunn, the County Solicitor. Beckham filed a cross appeal challenging the district court's granting of judgment n.o.v. as to defendant Brown and members of the Horry County Council. We find, however, that judgment n.o.v. was properly granted as to those defendants.

the fourteenth amendment to the United States Constitution.

The case was tried to a jury from November 28, 1983 to December 2, 1983 and on December 8, 1983 judgment was entered awarding Beckham $20,000 in actual and $5,000 in punitive damages for violation of his property interest and $15,000 actual and $10,000 punitive damages for injury to his liberty interest in his continued employment with the police department. The defendants Harris, Dunn and the former Police Commission members made a motion for a directed verdict at the close of plaintiff's case and a post verdict motion for judgment n.o.v. or, in the alternative, for a new trial. Those motions were denied by the district court as to those defendants. Harris, Dunn, and the Police Commission members timely appealed.

I.

Beckham was hired by the police department as a patrolman in July of 1979. Satisfactory execution of his duties was presumably the reason for his promotion and reassignment two years later to the position of detective in the Narcotics Division. In his new assignment Beckham served as an undercover narcotics officer with another detective, Mike Foreman.

The events which ultimately led to Beckham's discharge took place on January 20-21, 1981. Beckham and Foreman were assigned to investigate reports that illegal drugs were being stored at the Ship's Wheel Seafood Restaurant in North Myrtle Beach, South Carolina. They commenced a "stake-out" of the restaurant on the night of January 20, 1981. On the morning of January 21, 1981, after an uneventful night's surveillance, Foreman left the scene to procure a search warrant. Beckham remained

at the scene and stationed himself in a wooded area behind the restaurant. Upon Foreman's return, the officers executed the search warrant and discovered a large amount of marijuana[2] stored in the restaurant's walk-in freezer. The duo requested a back-up and as other officers arrived Foreman began to relate a completely fictitious story. Foreman claimed that, when he returned with the search warrant, he saw a silver van pull into the restaurant's parking lot followed by a black pick-up truck. Foreman claimed he recognized the driver of the van as Jerry High and mentioned that three other subjects, whom he identified only as Cuban nationals, occupied the van as well. The suspects, upon discovery of the officers, supposedly fled the scene at

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[2]In his affidavit executed subsequent to the seizure, Beckham reported that 50 bales or approximately 3,000 pounds of marijuana were confiscated.

a high rate of speed. Although Beckham was not stationed in the parking lot when the silver van allegedly entered the lot he did not believe his partner's story. Beckham questioned Foreman about his fictitious account and Foreman told him that it was an attempt to "smoke-out" fellow police officers who he believed might be involved in illegal drug smuggling. Foreman told Beckham to go along with the story; Beckham acquiesced.

Later that same day, based upon an informant's tip, police officers were told that three Hispanic men were seen at a local motel and that these persons had participated in the loading or unloading of the marijuana at the Ship's Wheel Restaurant. Upon the officers' arrival at the motel, several individuals of alleged Cuban nationality fled the motel on foot. Later that same day, within a five block area of

the motel, Jerry High was observed by police officers in a silver van along with three Hispanic males, all of whom were stopped and taken into custody. The van was transported to the Horry County jail to be searched.

In his affidavit, to be used as a basis for obtaining a warrant to search the seized van, Beckham attested to the fictitious story that Jerry High had been seen at the Ship's Wheel Restaurant on the morning of January 21, 1981.[3] Beckham's affidavit also served as a basis for arrest warrants issued for Jerry High, Bobby Gore and three male Hispanics or Cuban

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[3]The affidavit stated in pertinent part, that "Officer Mike Foreman did on the morning of Janaury 21, 1981 observe Jerry High at the Ship's Wheel Seafood House driving a silver Dodge van. Upon discovering police officers on the scene, Jerry High fled the area in the said van at a high rate of speed....Less than one hour elapsed between the time Jerry High was observed fleeing the Ship's Wheel Seafood House and the time his vehicle was stopped along with (3) three other occupants of the said van..."

nationality.[4] An incident report was also prepared by Beckham and Foreman containing the fictitious information.

A preliminary hearing was held on February 26, 1981 in relation to the arrests of High, Gore and the Cuban nationals. Foreman advised Beckham a few minutes before the hearing that he was going to stick with the fabricated story contained in the affidavit and in the incident report. At this point Beckham refused to present perjured testimony. He advised Captain George "Buddy" Fowler, his supervisor, and James O. Dunn, the county solicitor, that the information contained in the affidavit and incident report was false. He also admitted destroying a statement by another police officer which made reference to a set

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[4]All drug charges were subsequently dismissed against High, Gore and the three Cuban nationals.

of keys found at the county jail. Beckham did not testify at the preliminary hearing. On February 28, 1981 Beckham was discharged from the Horry County Police Department for furnishing false information. Foreman was discharged for testifying falsely at the preliminary hearing. Beckham did not request a hearing to challenge the charges against him. On March 12, 1981, Beckham was indicted by the State of South Carolina on charges of false swearing, conspiracy and obstruction of justice. He was later tried and acquitted of those charges.

Dunn and Chief of Police Harris called a press conference after the terminations. A press release was issued on February 28, 1981 announcing that both Beckham and Foreman had been discharged and several articles subsequently appeared in a local newspaper detailing the circumstances surrounding the officers' discharge and the

dismissal of drug charges against the five previously arrested men.

II.

A.

Harris initially contends that detective Beckham had no constitutionally protected property interest in his continued employment with the police department. Therefore, the department was not constitutionally obligated to provide Beckham with an opportunity to rebut the charges against him prior to his termination from the police force.

In order to be entitled to the procedural safeguards encompassed by the due process clause of the fourteenth amendment (notice and an opportunity to be heard) the complaining party must suffer from deprivation of a liberty or property interest. Board of Regents v. Roth, 408 U.S. 564, 569 (1971). "To have a property

interest in a benefit, a person clearly must have more than an abstract need or desire for it... He must have a legitimate claim of entitlement to it." Id. at 577. The sufficiency of such a legitimate claim of entitlement must be decided by reference to state law, Bishop v. Wood, 426 U.S. 341, 344 (1976) as evidenced by state statutes, local ordinances, rules or mutually explicit understandings that support the claim. Perry v. Sinderman, 408 U.S. 593, 601 (1972). Only when such a property interest exists does a constitutional right to a hearing attach. Roth, supra, 408 U.S. at 577. Our present inquiry, therefore, must be whether any South Carolina authority supports Beckham's claim that he has a property interest in his continued employment with the police department.

By Act of 1959, 1959 S.C. Acts & Joint Resolutions 18 ("1959 Act"), the

General Assembly of the State of South Carolina created the Horry County Police Commission.[5] Section two[6] describes the powers and duties of the commission, police chief and policemen. It also provides that county policemen serve "at the pleasure of the commission." On March 7, 1977, the Horry County Police Commission adopted the "Horry County Police Department Personnel Policies" ("personnel manual"), a manual governing the rules of conduct for county policemen. The manual, in its introduction, contains language identical to that employed in

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[5]The Horry County Police Commission was subsequently abolished by county ordinance on April 16, 1981.

[6]SECTION 2. Powers and duties of commission--duties of chief and police, including the chief, shall be at the pleasure of the commission and the commission shall have the exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the commission pending such hearing...

section 2 of the 1959 Act. Beckham asserts that the 1959 Act and the personnel manual establish that an employee may only be terminated "for cause" and therefore that a property interest exists in his continued employment.[7] Moreover, he contends that the explicit language of the 1959 Act and personnel manual requires a pre-termination hearing. We are unpersuaded, however, that either document establishes a property interest in Beckham's employment with the

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[7]At trial Beckham testified that it was his understanding that he could only be fired "for cause" once he attained permanent employee status. He also asserts that the disciplinary guidelines found in the personnel manual create an expectation that an employee cannot be discharged except for violation of certain specified conduct. This evidence, however, does not establish that a property interest was created in Beckham's continued employment with the police department. Moreover, the very guidelines to which Beckham points mandate his immediate discharge, i.e., "Group C -First Violation may result in discharge: 1. Falsification of records or misrepresentation of material information."

police department or mandates a pre-termination hearing in an instance where none is requested.

The 1959 Act and personnel manual both clearly state that terms of employment are "at the pleasure of the commission."[8] We have previously construed identical language to mean that an employee who serves without an employment contract is at the will of the employer and subsequently has no tenure and therefore no property interest in his employment, Patterson v. Ramsey, 552 F.2d 117, 118 (4th Cir. 1977), unless the discharge is in violation of procedural rules adopted by the employer specifically

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[8]While the personnel manual and the 1959 Act go on to state that an employee "shall" be allowed a hearing, the mere use of the word "shall" does not change the essential character of the employment relationship into something other than one at will. "Shall be allowed a hearing" is not the same as "shall be heard, whether or not a requestfor a hearing has been made."

designed to protect employees from immediate discharge. Prince v. Bridges, 537 F.2d 1269, 1272 (4th Cir. 1976). Such procedural rules for employee discharge can be found in the "State of South Carolina, County of Horry Employee's Personnel Policies" ("Employee's

Personnel Policies manual"),[9] although Beckham suggests in his amended complaint

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[9]The Employee's Personnel Policies manual is a plan adopted in accordance with §8-17-120 of the County and Municipal Employees Grievance Procedure Act ("the Act"). S.C. Code §8-17-110 (1976), a state statute which sets forth "a uniform procedure to resolve grievances of county and municipal employees arising from their public employment." §8-17-110. On August 10, 1976, the Horry County Board of Commissioners approved the Employee's Personnel Policies Manual "for Horry County employees," which presumably would include Horry County police officers. Several letters by Chief Harris and other county officials presented in the record before us find the Employee's Personnel Policies Manual applicable to police officers. If perchance Horry County "procedural safeguards" do not apply to police officers, such as Beckham, then as an employee serving at the will of the police commission, without a property interest in his continued employment, Beckham was not constitutionally entitled to a pre-termination due process hearing. Assuming its applicability, the grievance procedure section of the manual enumerates a three-step procedure to be followed by an aggrieved employee who cannot resolve his grievance through informal arbitration and seeks a hearing before the Horry County Grievance Committee.

In Bunting v. City of Columbia, 639 F.2d 1090 (4th Cir. 1981), we held that a police officer who serves at the will of the City of Columbia has no property or liberty

that the manual may not apply to police officers. Beckham, however, failed to request a pre-termination hearing within the prescribed thirty day period; he waited until May 18, 1981, over two months after his

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interest in his continued employment. The employee was nonetheless entitled to a grievance hearing under the County and Municipal Employees Grievance Procedure Act. In that case, however, the City of Columbia's personnel policy manual did not conform substantially to the Act, as requried by S.C. Code §8-17-120, and policemen who filed a cognizable grievance under the department's personnel manual had to be employed by the police department for a longer period of time before being able to file a grievance than was required by the Act. No such disparity arises with the Employee's Personnel Policies manual. Nor does the Act limit the police department's ability to discharge an at-will employee. Rhodes v. Smith, 273 S.C. 13, 15, 254 S.E.2d 49, 50 (1979) (South Carolina statute allowing sheriff to dismiss deputy sheriff at his pleasure unaffected by County and Municipal Employee's Grievance Procedure Act, S.C. Code §8-17-110 (1976)).

discharge, before requesting a hearing.[10] The Employee's Personnel Policies manual provides for a pre-termination hearing to those aggrieved employees who request one. The police department is not required, either by constitutional or statutory mandate, to provide a hearing to one who sleeps on his rights. Since no state constitutional,[11]

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[10]The Employee's Personnel Policies Manual provides in Article IV ("Procedure"), Step I that "he may notify his department head, within 30 working days of learning of the grievable action, that he wishes to present a formal grievance. The department head, without delay, shall scheduled a hearing with the employee..."

[11]Article I§22 of the South Carolina State Constitution provides:

> No person shall be finally bound by a judicial or a quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; ...nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

Such provision, however, does not create a protectable property right, but merely protects one already in existence. Bunting v. City of Columbia, 639 F.2d 1090, 1094 (4th Cir. 1981).

statutory or contractual basis exists supporting Beckham's property interest claim we must conclude that no such expectation arises.

B.

Appellant next argues that Beckham had no constitutionally protected liberty interest in his employment because Beckham acted as his own accuser, thereby negating the need for a due process hearing. We agree.

There is little doubt that a constitutionally recognized liberty interest is implicated and the right to procedural due process required when government action threatens an employee's good name, reputation, honor or integrity. Roth, supra, 408 U.S. at 573. Moreover, governmental dismissal may abridge liberty if an employee is foreclosed from taking advantage of future employment opportunities. Id. at 574. In such a case,

due process requires that the aggrieved individual be afforded a hearing to clear his good name. Beckham finds an infringement upon a protected liberty interest arising from the publicity surrounding his termination. He asserts that false information was spread by the defendants severely damaging his reputation and good name.[12] The truth or falsity of Beckham's claim, however, has little import in an action alleging infringement of a constitutionally protected liberty

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[12]As previously stated, a press conference was held by Chief Harris and Solicitor Dunn after Beckham and Foreman were discharged. A press release issued by Chief Harris on February 28, 1981 stated that "Foreman testified falsely at a preliminary hearing and Detective Beckham was an active participant in furnishing false information to this department." A newspaper article appearing in a local newspaper, however, erroneously claimed that both Beckham and Foreman presented perjured testimony at the preliminary hearing. There has been no persuasive showing that the error of the newspaper was in any way chargeable to Harris or the other defendants.

interest. Bishop v. Wood, supra, 426 U.S. at 349. Such an assertion is more properly addressed in a state court defamation proceeding.[13] While there may well have been publicity tending to disparage Beckham's character, we have previously held that the need for a pre-termination due process hearing is negated where the discharged employee has admitted his guilt and, in essence, become his own accuser. McNeill v. Butz, 480 F.2d 314, 320 (4th Cir. 1973). An opportunity to confront his accusers or present exculpatory evidence serves no useful purpose when the accused himself has admitted the very acts which compromise his character or impugn his integrity. There exists ample, uncontested support in the record that Beckham admitted

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[13]In fact, it was revealed during oral argument that Beckham prevailed in a state court libel action against the local newspaper.

falsifying the affidavit and incident report.[14] While twenty-twenty hindsight

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[14]In a statement on February 28, 1981 to Glen B. Causey of the Horry County Police Department Beckham stated:
Q. Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that mentioned about them being at the restaurant when you went up to the restaurant?
A. In the affidavit it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene.
Q. And that was not ture, is that correct?
A. No sir, it was not true.
Q. Did you sign the affidavit?
A. I signed the affidavit. Mike said he wanted me to go ahead and get the warrants up.
Q. But at the time that you signed the affidavit, did you know that was a false affidavit?
A. Yes, sir, I did.
Q. But you signed it anyhow?
A. Yes, sir, I did.
On March 4, 1981, Beckham was interviewed by Tom Fraser of the South Carolina Law Enforcement Division wherein he stated:
Q. But you did sign all the affidavits and the arrest warrants?
A. I signed all of them.
Q. And the search warrant for the truck?
A. Yes, sir.
Q. But you did this at whose direction?
A. Well, I did it at Mike Foreman's direction because he told me that he had this plan.
Q. And as a result of you signing these warrants, the subjects were placed in the Horry County Jail?

counsels Beckham against engaging in such regrettable conduct in the future, a liberty

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A. They were already in the Horry County Jail when I signed the warrants.
Q. And since that time, they have been released on bond, is that correct?
A. Yes, sir.
Q. The affidavits that there signed were fabricated?
A. Yes, sir.
At the trial before the Honorable C. Weston Houck on November 28 and December 1 and 2, 1983 Beckham testified:
Q. Did you tell them (referring to Lt. Causey interview) it was false?
A. I did, yes, sir.
Q. And you swore that this was true?
A. yes, sir, I did.
Q. "At the time you signed the affidavit, did you know it was false?"
"Yes, sir, I did."
"But you signed it anyway?"
"Yes, sir, I did."
[reading from transcript of interview]
And you raised your hand to swear it was true?
A. I didn't raise my hand to any of this, but yes, I swore it was true.
Q. Did you have to raise your hand to swear it was true?
A. No, sir, I put my signature on it.
Q. When you put your signature on it, that ment it was true?
A. Yes, sir.
Q. I didn't ask you about Judge Johnson. I asked you is that statement a lie?
A. No, sir, it's not a lie. It was overlooked.
Q. Well, is it true? It was put in there.

interest protectable by the due process clause of the fourteenth amendment does not arise in this case where Beckham by his own words and deeds admitted misconduct. A hearing, had it been granted, would only have confirmed the accuracy of the press release. That a newspaper got things wrong in a manner injurious to Beckham creates no cause of action against the defendants when, as here, no persuasive showing has been made that they contributed to the media error.

Accordingly, we reverse, and direct that judgment n.o.v. be entered in favor of Harris, Dunn and the former Police Commission members.

REVERSED.

A. It was intended to be true when it was put in here.
Q. But it's not true?
A. No, sir, it's not.
Q. And you signed your name to it?

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 84-1211

Thomas G. Beckham Appellee,

versus

J. Gordon Harris, etc.,et al, Appellants.

No. 84-1261

Thomas G. Beckham, Appellant,

versus

J. Gordon Harris, etc. et al, Appellees,

and

J. Gordon Harris, etc., et al, Defendants.

Appeals from the United States District Court for the District of South Carolina, At Florence. C. Weston Houck, District Judge.

Upon consideration of the appellee's motion for an extension of time to file his petition for rehearing'

IT IS ORDERED that the motion is granted.

Upon consideration of the appellee's petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Murnaghan for a panel consisting of Judge Hall, Judge Murnaghan and Judge Micheal, U.S.D.J., sitting by designation.

[Filed April 22, 1985] For the Court.

John M. Greachen

CLERK

APPENDIX C

Supreme Court of the United States

No. A-14

Thomas G. Beckham

v.

J. Gordon Harris, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 19, 1985.

/s/ Warren E. Burger

Warren E. Burger
The Chief Justice

Dated this 9th
day of July, 1985

APPENDIX D

EXCERPTS OF TRIAL COURT RECORD

Testimony of Thomas G. Beckham (Petitioner)

Q How long were you with the Myrtle Beach Police Department the second time?

A Until July of 1979, at which time I assumed a position with the Horry County Police Department.

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Q What position did you take with the Horry County Police Department?

A When I first went with Horry County Police Department I went as a uniformed patrol officer, and at a later date I went into the Narcotics Division.

Q How long were you a uniformed patrol officer?

A From July of '79 until January 2, 1981

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Q Before we go on, let me ask you this: When you went into the Narcotics Division, what was your status with the Horry County Police Department?

A I had served a six months probationary period, and I was now on a permanent status with them.

Q What does it mean, what did it mean to be on permanent status with the police department?

A Well, at any time after you have -- well, during your probationary period, if they didn't like the work I was doing, didn't like my attitude or just whatever they didn't like about me, or if I didn't like my job or their attitude, I could be terminated or I could leave, and there would be no questions asked. Anytime after that I was a permanent position there, and I would have to be -- have due cause to have been fired or should give notice if I left.

Q You said when you went with the Narcotics Division, Mike Foreman was working there. What was your relationship with Mike Foreman at that time?

A Well, he was the senior officer there, but he was my partner.

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Q How much experience, prior to this time, did you have in undercover work?

A Very little. I had been called upon on occasion to assist for a day or two here and there. Nothing of any extent.

Q Do you recall your investigation of the Ship's Wheel Restaurant in Little River, South Carolina?

A Yes, sir, I do.

Q How did the investigation begin?

A Well, the investigation of the Ship's Wheel itself stemmed from an ongoing investigation we already had going, that began about the 10th of January.

Q What investigation was that? What was happening at that time?

A Detective Foreman had received information from a confidential and reliable informant that a load of marijuana --- My partner had received this information and passed it on to me. The information was that there was a load of marijuana going to come in to Myrtle Beach, inside the city limits of Myrtle Beach, to a house on approximately 46th avenue north, sometime around the night of the 15th of January. The information also was that it was to be taken from there to a house in Socastee and stored, and along with this information, the information was received that there was also a possibility of police officers involved, two with the city of Myrtle Beach, and either two with the county and one with the Highway Patrol or three people with the county. In other words, there was five police officers

supposed to have been involved in the situation.

Q As a result of this information, what then did you do?

A We began checking out the area on 46th avenue --I say we, I mean Mike Foreman and myself. We began checking out the area on 46th avenue. It was a house on the beach, which was under repair by a construction company, and also checking, trying to locate the house at Socastee that this same construction company owned.

Q How did you go about watching this house, checking out this house?

A I had borrowed a pair of night vision binoculars from the National Guard in Myrtle Beach, and I would sit in the Sand Dune areas and observe the house, and then ride by during the day and take pictures of the house and all the tags on the cars sitting in the yard, at which point in time detective

Foreman got sick with a flu bug or something, and I had it all to myself.

Q What happened then?

A On the morning of the 15th of January, I was given a call by U.S. Customs, and they were advising they had information of a load of marijuana was going to come in, not into Myrtle Beach but into Little River, and that the boat that was involved in it was a boat that belonged to Jerry High, and at this time they advised me they would meet me in North Myrtle Beach. I went to the North Myrtle Beach Police Department, got in touch with the detective there that had formerly worked with the county police, and had informed him of the situation I had, and also got with Johnny Causey, who is the chief of North Myrtle Beach Police Department.

Q What then occurred?

A We set up surveillance in the Cherry Grove area of North Myrtle Beach, and

also on the road going out to Little River neck, and the drug enforcement administration met us up there and set up surveillance on the North Carolina side of the Little River inlet area.

Q As a result of your surveillance, what happened?

A Well, I was trying to keep watch on this house in Mrytle Beach, also, so I was running back and forth, but at one point in time a North Myrtle Beach officer called us to his vantage point, which was on the Cherry Grove inlet, and Chief Causey and I went to that area and looked through night vision binoculars and observed a boat approximately a quarter of a mile offshore coming towards the beach. The boat got into between a quarter and tenth of a mile offshore and stopped, waited several minutes, turned around and went back out in the ocean.

Q Do you know why it did that?

A I don't have any knowledge of why it did. It just appeared that maybe it had been warned or signaled, but they went back out to sea. They didn't come back in.

Q What happened after that?

A After a vain attempt to locate the boat, I went back to Myrtle Beach to check the area on 46th avenue and found while I was gone a load of marijuana had been loaded off.

Q After you discovered that, what then did you do?

A I began checking the houses in the Socastee area trying to find out where it was moved to, and when I was unable to locate the exact house or even when I did locate a house I thought it was the one they were talking about, there was no way we could tell what was inside of it or anything. So I started checking some of the other landings

and all, trying to find where the other boat might have come in.

Q What happened as a result of those checks?

A They were in vain. I spent about three nights in my car, just living out of my car on vienna sausage and crackers.

Q What happened next?

A The morning of the 20th, I went home and got in bed. I was exhausted, and sometime on the afternoon of the 20th, probably two or three hours after I had been in the bed, Detective Foreman called with information he had received from the drug enforcement administration about the Ship's Wheel.

Q Did he tell you what that information was?

A Not at that time. He wanted me to meet him at the jail. We were going to the Ship's Wheel Restaurant.

Q Did you meet him at the jail?

A I met him, and on the way to the Ship's Wheel he relayed the information from the drug enforcement administration, and this was the fact that there was to be, originally set it for a hundred bales of marijuana, but then it turned out to be 50 bales of marijuana was to be put in the cooler at the Ship's Wheel Restaurant. There was another load of marijuana that was going to come in that night, to be joined with the first load, and then Jerry High and some Cubans were going to take the marijuana from the Ship's Wheel Restaurant to somewhere over in the Calabash or Little River area. It was relayed that there was -- out of the Cubans involved, that one of these Cubans was to be armed, and he was going to be guarding the marijuana, and there was a possibility that he was involved in two drug-related murders in the Miami area.

Q As a result of this information, what did you do then?

A We contacted -- I say we, Mike Foreman and I contacted Captain Fowler and some of the other members of the Horry County Police Department, which met us in Calabash, North Carolina, and passed the information onto them, and from there, a stake-out was set up on the Ship's Wheel area. I don't know where Captain Fowler and them were set up, but Detective Foreman was set up in the parking lot of the welcome center watching the front of the building, and I was set up in the woods behind the restaurant watching the rear of the Ship's Wheel Restaurant.

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Q What were you told by this gentleman by the name of Buzzard?

A He was relating back the fact, again, that we had painted our car. He had recognized the car. He said, "Everybody up

here knows that car and know your tag." He said, "We know what y'all are waiting on. We know you're waiting on that load of marijuana coming in." Which kind of floored me. There wasn't anybody supposed to know it except for us, the county people and the D.E.A. He said, "It's not coming in here. It's been rerouted into Calabash." He said, "There's police officers up here that tell me what's going on." He said, "They know y'all are here."

After a few more minutes of conversing with Mike, he got in his car and drove off.

Q After that, what happened?

A Well, I was kind of frustrated over the situation. I told Mike, "Look, why don't you, with the information you have from your informant, and your information from the drug enforcement administration, plus what we observed with the coolers, let's

get a search warrant and search the thing, and if there's marijuana, we'll get it and if not, let's get out of here."

So, Foreman went to get the search warrant and I went back into the woods.

Q What happened while you were in the woods?

A Well, I don't know how long Mike was gone, but I was cold, like I said, and it was still raining, so I tried to find a dry vantage point, and I found an old chicken coop so I laid in the chicken coop and waited for Mike to get back.

At some point later he called on the radio and I told him to meet me at the corner, which was at the Ship's Wheel -- not the Ship's Wheel, excuse me, the welcome area where he had been sitting and surveilling from. I met him over there. I had to go through the woods, and when I got

there, he says, "Did you see Jerry High? I said, "No, I hadn't seen anybody."

He said, "I just saw him, and somebody in the van with him, looked like a Cuban." I said, "Well, I hadn't seen anybody,"

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Q What did you do once you had the search warrant?

A We went over to the restaurant, drove through kind of casually, to make sure this fellow, this guard, wasn't out there, and I saw the back -- sawed the lock off the rear cooler and opened it up and there was more marijuana there than I had seen before, in a while.

Q Do you recall how much marijuana was there?

A I think it was 3,000 pounds, turned out to be 31 [sic] bales.

Q Once the marijuana was discovered, what did y'all do?

A I looked over at Mike, and I think my words were out of my mouth, "Bingo." And Mike kind of started glancing around like he was looking to see, you know, like it scared him, too. He was looking around to see what he could see, and he said, "Well, we better get some help here. These people are liable to come back." So I agreed with that. I was scared about this Cuban fellow that was supposed to be there.

So, he got on the radio and he called for assistance and couldn't get the county, so he called the North Myrtle Beach Police Department. They relayed the information and they also responded.

Q After the call went out, what happened next?

A Probably within three or four minutes, maybe a little longer than that,

we started hearing the sirens coming up the road, and two North Myrtle Beach units arrived. One was a detective car and one was a marked unit, and when they pulled in they were getting out of the car wanting to know what was going on, and Detective Foreman says, "We have a lot of marijuana here and we're scared they're going to come back and get it. We need to spread out and be on the lookout there's supposed to be some armed Cubans here," which anything he said up to now didn't bother me.

Within a few minutes, though, other police officers were starting to arrive, and Mike said, "I went to pull into the parking lot, and here's a van going out of there at a high rate of speed, and just about turned over, and Cubans running all over the parking lot."

Q Who said that?

A Detective Foreman. This upset me. I said, "Mike, what are you talking about?" And I hadn't seen this and if there had been Cubans in the parking lot as dangerous as this one, seems like he would have told me. So, I didn't believe this.

So, I asked him, "Mike, what are you talking about?" He said, "Just go along with me. We're going to have to smoke these people out. They've gotten away from us here, but we're going to catch them in the long run."

I just kind of stood off to the side --

Q What did you tell people?

A I'm not sure exactly who it was that came up to me first, but somebody came us and said, "What's going on," and I said, "Well, we've got some marijuana, and there's been some people in the area and we were worried about them maybe coming back." And

then at another time somebody asked me what was going on, and I told them, "Mike saw some people here and you need to ask Mike who they were because I didn't see them."

Q After that, what then occurred?

A More officers arrived on the scene, and we got the area sealed off. I guess we had about 15 to 20 officers all together, and there was a lot of excitement going on, and Mike was on the back porch telling this story about the people had been running around in the parking lot.

Q At his point, why didn't you tell someone Mike hadn't seen what he was saying?

A I had been back up to Mike again and told him, "Look, Mike, what in the hell are you talking about?" Mike said, "Just go along with me. We'll smoke these people out." He said, "Just trust me. I've never led you astray. I know what I'm doing."

So, at the time I felt, well, he knows what he's talking about. There's not anything that happened so far that was any harm to it, really.

So, he's on the back porch telling about what was going on, and these other officers were saying, "Where did you get your information?" And Mike advised them that the D.E.A. and also another informant had given information about High and the Cubans were supposed to be coming to get that other load of marijuana from there, and that also there was Cubans staying at the Colonial Inn Motel.

I'm not sure what officer it was, but one of the officers said, "I just saw a Cuban at the telephone booth at the Colonial Inn." I believe it was either Captain Fowler or Chief Graham --

Q What happened then?

A --gave out an order to try to locate the Cubans for questioning. So, Detective Hillsberry and myself took a car, Jack Blackwell from the County Police took a car, and one of the North Myrtle Beach Police cars went to the Colonial Inn. Before anybody else got there, Jack Blackwell got there, and he hollers on the radio that a Cuban had run from the phone and was running into the wooded area. He gave the description. The description he gave of the Cuban was the same one that Mike had given of the guy in the van, with the black leather jacket on. As he got in the woods, several of us got out. Detective Beller and myself were looking in the woods trying to find him. After five or ten minutes we couldn't find him so we went back to our car. We left there and went back to the restaurant, and the radio call came and said that they had caught some Cubans on the road going

down to the Little River waterfront. I went back to --

Q Do you know who called them Cubans?

A I believe it was Chief Graham, and Pat Bellamy, the Magistrate, and one of the North Myrtle Beach Police units. So, I went back over to the location where they had this van stopped, a silver van, and there's three individuals in one police car and another individual in another car, and the van has all the doors open and there's luggage scattered all over the ground, and Officer Knowles, I believe it was, walked up to me and handed me a driver's license, and here's the driver's license of Jerry High. It struck a familiar bell.

***

A He asked me, he said, "What did they arrest these people for? What did they go on?" I said, "Mike, I don't really know," and before I finished talking, he said,

"Well, you know no matter, we were still going to have to carry this thing out the way it's going. Because if it's going to work, we have to go with it as it is."

***

Q What was the next thing that happened?

A Mike Foreman came to me and said that Captain Fowler wanted the van searched. He wanted to find out what evidence was in the van. Of course, the evidence in the van had already been scattered all over the road, and at this time I started checking the areas of the van. I was getting ready to open the door. Matter of fact, I already had the door open, and Jim Dunn walked up and said, "If you're going to search the van, let's do it right. Do you normally do it by inventory search?" I said, "No, we haven't been. We've instituted some kind of

procedure, I've seen some kind of paperwork on it."

Q Who is Jim Dunn?

A That's the Solicitor for the 15th Judicial Circuit, which includes Horry County. He said, "No let's don't do it that way. Come over to my office and get a search warrant and do it ight."

Q When he told you this, what then did you do?

A I went and got Mike Foreman and told him what the solicitor had wanted, and we went over to the solicitor's office.

Q What happened at the solicitor's office?

A Well, Mike Foreman, when he got there, he came in and he told this story about seeing the van turned sideways coming out of the parking lot, and these Cubans running around, and then called me over to the side and said, "Look, go along with it.

Everything will be cool. We'll have it all straightened out soon as we get in touch with Chief Harris, before it gets to the courtroom."

So, at this time, he was going to leave, and before he left, Jim says, "Well, what of this did you see?" I said, "I didn't see any of it. I can't identify any of these people." And he says, "Okay." And Detective Foreman says, "I can." So, he went back to the story again. He left me, and I was left there to set everything in chronological events with the solicitor, and we got the affidavit worded up from that.

Q What [sic] didn't you tell the solicitor at that time that you felt like Mike Foreman hadn't seen anyone?

A I felt like the man knew what he was talking about, the information about the police officers being involved and the informant coming to the scene up there and

telling us that police officers were involved, the situation with the boat coming in and acting like they had some kind of signal. It was all lined up like the informant had said. I felt like Mike knew what he was talking about. He kept telling little things here and there and everything just fell right into line, like he knew what he was talking about.

Q Now, you specifically state in the affidavit that Officer Mike Foreman did on the morning of 1-21-81 observe Jerry High at the Ship's Wheel Seafood House. Why did you put that into the affidavit?

A Mike Foreman had told me that morning that he saw Jerry High when he asked me did I see him and I said no, and he said, "Well, I just saw him."

Q Did he say how he saw him, where he was?

A He just said he saw him driving a silver van with this Cuban or a fellow that looked like a Cuban. He didn't say he was a Cuban.

Q Where did he say the van was?

A He said, "Leaving here," and when he said, "Leaving here" I was under the impression he was talking about the Ship's Wheel.

Q Why didn't you put in there that Jerry High was seen leaving the parking lot of the Ship's Wheel Seafood House?

A I didn't feel like what Mike Foreman said about the parking lot was true, and I didn't want it to go in the warrant.

***

A The next step, I met Mike over at the office the next morning, somewhere around 11 or 12 o'clock, and this was when I began to question him on what this plan of smoking these people out was to involve. I was

concerned, because, you know, he hadn't discussed it with me, what we were going to do, how this thing was supposed to work. So that was when the idea of his was to use an incident report, a loaded incident report to allow anybody that came sneaking through our office could find this information, find out just how tight a case we had on these people, and if they got back in touch with the people and the people say, "Well, they don't have a tight case on us," and the officer looked at the incident report and he knew it was a tight case and he thought they were going to turn him in, and they were leading him to believe it wasn't such a good case ---

***

A There was one prepared that was an official incident report. It just listed information provided to us by D.E.A., the fact that 51 bales of marijuana -- at the

time I think it said 50 bales but we had miscounted and we later found out we had more than we thought.

***

Q Explain to the jury what exhibit no. 5 is.

A Well, it's a combination of the two incident reports. The top page was for the one that was supposed to go with the file, and the second page was the one to go on the desk. One was handwritten, another was typed, and evidently they got paged together here.

Q How did that come about, do you know?

A No, sir, I don't know. There was a lot of commotion going on. It could have been done, we were putting the paperwork together back there in the back -- I don't know. I might have stapled them, Mike might

have stapled them together. I don't know.

***

Q Tom, why did you prepare this report when the day before you told Solicitor Dunn you hadn't seen anyone?

A That report was not intended to go to Solicitor Dunn. I'd be a fool to tell him one day I didn't see anything and give him that report the next day. The only reason I went along with it, the information we had been receiving from the informant, information I received personally from the drug enforcement administration, that they thought possibly there had been policemen involved. One of the highway patrolmen up in the North Myrtle Beach area approached me with the same information.

Q What information was that?

A About the possibility of police officers being involved.

Q After the report, the loaded report was prepared, what did you do with it?

A It was put on my desk in the narcotics office.

Q State again what the purpose of the loaded incident report was.

A It was a trap for people who came pilfering through the desk trying to find out what kind of information they could find, how strong our case was.

Q How would this information affect those who would pilfer your desk?

A If an officer ran across that and saw the information that was there and went to one of these other people that he was involved with, and said, "Boy, they got a strong case against you," and the man tells him, "No, they don't have a strong case against me," and then either the police officer starts wondering, "Well, is this guy just telling me this because he's getting

ready to turn me in," and then the criminal himself wants to come in and plea bargain and turn the officers in. It would work in one of those two manners, as it was explained to me, and it sounded logical.

***

Q What happened at the preliminary hearing?

A Well, at the preliminary hearing itself, Mike met me in the hallway, called me off to the side, and said, "Look, this thing is going to have to run longer than we thought. We're going to have to let it go through the preliminary." I said, "No way. You're talking about perjury, Mike. I can't get up there and lie." I said, "Spread rumors and stuff like that, that's fine, but I cannot lie under oath on the witness stand."

Q What happened then?

A Well, they were getting ready to call the preliminary, so he called me into the little room where the coffee room is and he said, "Look, we're going to have to testify the same or we're going to have the case go down the drain, whatever we got that's good or bad."

I said, "Mike, the hell with it. I don't care. I'm not going to perjure myself."

Q What happened at the preliminary hearing?

A He took the stand and he perjured himself.

Q What did you do then?

A I turned to Captain Fowler, we were sitting in a little jury box like this one here, and he was sitting behind me, and I turned in the chair and I said, "Buddy, I need to talk to somebody. Mike's lying." I said, "I never called on the radio. I

never called anybody on the radio. I never saw anybody up there. He knows that and I told Jim Dunn that."

***

Q After that, what did you then do.

A I went back to Captain Fowler and told him the whole circumstances about the fact that Mike had perjured himself, that it needed to be straightened out. I was having trouble with my conscience at that time because he was my partner. I had been trusting the man and yet here I was going to have to turn him in. That was something that police officers just don't ever do, and I was to turn my partner in.

Q After you told Captain Fowler this, what happened next?

A We went to Solicitor Dunn's office and told him the same situation.

Q What happened when you were discussing the matter with Solicitor Dunn?

A Just went over the same thing I'd gone over with Captain Fowler about it, and he said, "Well, let's wait for Chief Harris to get back from Washington to handle the situation."

Q After your discussion with Solicitor Dunn and Captain Fowler, what happened next?

A I was told just to go on back to the house, to my home and wait until Saturday morning, and be back in there that morning. I think we met at 8 o'clock at the jail that morning.

Q What day was it that you met with Solicitor Dunn before you were told to come back?

A Thursday.

Q So, you were told to come back Saturday?

A Yes, sir.

Q Who was there when you went back?

A The Chief was there. Sheriff Brown was there. Several of the commissioners, I believe, including Mr. Flowers, I think, in and out. I'm not sure whether at the time Horace Jordan, Delano Sanders, Jim Dunn, various members of the police department and the police commission.

Q When you got there, what happened?

A Chief Harris, Jim Dunn and Captain Fowler went into the Chief's office a couple of moments and talked, and then they called me in. I was brought into the room.

Q When you were taken in, what was said to you and what did you say?

A Chief Harris said that there were some problems he had heard about, and he thought we needed to talk about them. I agreed that we did need to talk about them, and he read me my Mirandas.

Q Explain what a Miranda is.

A It's a warning that you have the right to remain silent, that you can -- anything you say can and will be used against you in a court of law, just explains the various rights that you don't have to tell anything to the man.

Q After you were given your Mirandas, what happened next?

A I told the Chief that Mike had perjured himself on the stand, and he asked me various questions, and I answered his questions, and this went on for about 45 minutes to an hour.

***

Q Tell the jury who Buddy Causey is.

A He's the internal affairs officer for the policy department, a lieutenant in the Detective Division. I went into -- I don't know what they call the room, Chief Graham's office, and they set up the dictaphone, and I gave Buddy Causey a

statement. Within 20 or 30 minutes after Mike Foreman had gone in and given his statement, I was called in to the Chief's office and I was told that I was terminated.

***

Q Briefly describe what went on prior to your having talked to Detective Causey.

A I had been in the Chief's office and discussed with him the fact that Mike had perjured himself on the stand, and the fact that we had been trying to smoke out the police officers that were involved in it, and that the thing had just gone so far that I just felt like lying was just not a part of it, not lying on the witness stand. I could go along with reports and stuff like that, as long as it was not something that was going to be a courtroom type document. But I was not going to go up there and lie on the witness stand. The solicitor himself

was the one who was talking about the courtroom documents, even though I didn't feel like I had lied about it, in fact, because I knew the information that Foreman had given me was false, so the affidavit I gave was false.

Q What did you say to that?

A I'll tell you, there was just so much going on in the way I felt over the situation, I was just crushed about the thing about my partner. Like I said a while ago, it didn't make any difference to me at that time. The whole thing was turning into a ...

***

Q Referring to the page before that, Mr. Beckham, page 4, the tape we just heard, and in the written statement it says, "Question: Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that mentioned about them

being at the restaurant when you went up to the restaurant?"

It says, "In the affidavit, it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene."

Then Detective Causey asked you if that was true, and you say, "No, sir, it was not true."

He asked you if you signed the affidavit and you said you signed it, yes, and he asked you, "But at the time that you signed the affidavit, did you know that was a false affidavit?" Your answer was, "Yes, sir, I did."

He asked you, "But you signed it anyhow?

The answer is, "Yes, sir, I did."

Tom, why did you say that?

A Well, actually two thing come into this. One was the fact that I was told that

if anything that was said to obtain the affidavit was false, then the affidavit was false.

Q Who told you this?

A That was during all this questioning that morning on the 28th. But this particular statement that morning right here, a lot that had to do with that was that I didn't know at that time what Mike was telling me was true and what he was telling me was a lie. And at that time, I didn't really care. I just felt like the whole thing was a lie. And that had a lot to do with this particular statement.

***

Q What was the next thing that happened after you gave you a statement to Lieutenant Frazier?

A An indictment.

Q What indictment was that?

A I was indicted on conspiracy, obstruction of justice, false swearing.

Q When did you discover that the statements you made and the affidavit were incorrect?

A About three days after the indictment. I was in my attorney's office and he asked me to go through the affidavit and I showed him what I was talking about was incorrect in my statement, and that there was just nothing in the affidavit that was incorrect.

Q During what period of time after you had given the statements did you find out that the affidavits were incorrect? Do you recall when that was?

A Three or four days after the indictment. I don't know how long a period of time it was, Mr. Leiter. A week or so.

Q What happened at the trial, at the criminal trial?

A I was indicted -- excuse me, I was acquitted. I don't know what else you might be referring to.

***

Q After you were acquitted, what efforts did you make to get your job back?

A The trial ended on a Saturday, and that following Monday morning I was in Chief's Harris' office wanting my job back.

Q What were you told by Chief Harris at that time?

A Chief Harris said he didn't have the authority to give me my job back and I had to go to Bill Brown. I went to Bill Brown, who was the county administrator, and he told me I would have to start filing grievance procedures before I could get my job back.

Q What did you do then?

A I already informed Chief Harris I wanted to have grievance proceedings, so I

wrote him a letter advising him the same thing.

Q After you had written a letter, what happened then?

A I got a letter back referring that he would have to refer to the county attorney who was out of town. I got a second letter stating that I didn't comply with some -- I forgot what the title was, but a time limit, and therefore I was disallowed a hearing.

Q Let me show you these letters and ask you if they are the letters you sent and received?

A There's one missing, the one I sent to county council.

Q I'm going to ask you if you can identify what has been marked plaintiff's exhibit 23 for identification?

A Yes, sir.

Q What is plaintiff's exhibit 23?

A Plaintiff's 23 itself is a letter I sent to the chairman of the county grievance committee, and also a letter to the chairman of the Horry County Council.

Q Is that your signature on the second page?

A Yes, sir, it is.

Mr. Leiter: I'd like to introduce plaintiff's exhibit 23 into evidence at this time.

Mr. Henry: No objection.

The court: Let the clerk mark it.

(Plaintiff's Exhibit No. 23 Received in Evidence)

By Mr. Leiter:

Q Now, why weren't you given a hearing at that time, Mr. Beckham?

A I was told I didn't come within the time frame that was required to be able to file a grievance, which I disagreed with,

and that's why I kept writing these other letters.

Q What time frame was that?

A I think it was thirty working days from the time that you learned of an aggrievable action, which I felt was my acquittal. I didn't feel like I could try to send in a grievance if I was under indictment. That would be kind of futile.

Q So, it's your testimony that you submitted a request for a hearing within thirty days after an aggrievable action?

A Within a couple of days.

***

Q Who was your supervisor?

A Mike Foreman.

Q Who had been at the department the longest, you or Mike Foreman?

A In the department? Me. In the narcotics, Mike had, for about eight months.

***

TESTIMONY OF Michael Foreman

Q What did Buzzard say to you?

A He come to tell me that one of Horry County Police Officers had already went and told Jerry High and them that we were already on stake-out, that Officer Beckham and myself were on stake-out and that he'd already went and told them and they weren't coming.

***

Q Why were two incident reports prepared?

A Well, we had, Officer Beckham and myself had prepared one, which was the original, to go into the files, which basically just stated who was arrested and so fort, and what happened. The other one was drawn up and left on the desk and we had intentions of, hoping that the right people would see it and realize that we knew they were involved and hopefully we could do

something with them, make them out or make them either quit, resign, or do something.

Q That was part of the plan to smoke out that police officer?

A Yes, sir.

***

TESTIMONY of Robert Bloodworth (Reporter)

Q When did you first hear that Tom Beckham had been fired from the Horry County Police Department?

A I forget the exact date. It was the date of the news conference that Chief Harris and Solicitor Dunn called. It was either late that moring or early that afternoon.

***

Q Do you recall what was said about Tom Beckham having given false testimony during a preliminary hearing?

A Yes, sir. Well, I don't think he specifically said Tom, I believe he said

that both of them had given false testimony during the preliminary hearing.

Q Well, when you say both of them, who do you mean?

A Tom Beckham and Mike Foreman.

Q Did you have any other conversations with any other officials about Tom Beckham's involvement in the matter?

A Yes, sir. I talked with Chief Harris, of course, and I think I discussed it with some members of the police commission, but I don't remember the exact conversation.

Q You don't remember the exact conversation?

A Not with the police commission, no.

Q How about with Chief Harris?

Yes, sir -- well, he just gave me the background, and essentially the same thing that Chief Harris had said, and that he

didn't have any choice but to take the action that he was taking.

The Court: Who was that?

The Witness: Chief Harris.

By Mr. Leiter:

Q What about Chief Harris having said that?

Mr. Henry: Objection. He's leading.

The Court: I think he is. It's a right critical areas, and I'd like for this witness to testify what he recalls being told about this incident, and I don't believe there's any reason to suggest anything to him.

By Mr. Leiter:

Q What were you told about people who testified at the preliminary hearing?

A Well, I think the general conversation was that Tom and Mike --- What the solicitor had already told me.

By Mr. Leiter:

Q What was that?

A That Mike and Tom had both testified falsely or signed false affidavits or warrants under oath.

***

DEPOSITION of James O. Dunn (Solicitor)

A Between the two of them, Foreman was the supervisor, he was the senior man, if I recall, I know he was, ...

APPENDIX E

Excerpt of the Post-Trial Motions Hearing before District Court Judge C. Weston Houck, February 7, 1984

The Court: As far as your position, Mr. Henry, to the effect that plaintiff was his own accuser, I submitted that issue to the jury. I charged them what I thought was the appropriate law relative to such a defense, and as it applied to the liberty interest claim--and I assume from their verdict that they felt that there was a disagreement between the parties as to what the plaintiff did.

If I were sitting on the jury, I wouldn't have reached that conclusion, but there are facts in the record from which they were justified in reaching that conclusion. I'm inclined to believe, myself, after having heard the case, that when this man was terminated, there really was no

substantial difference in what he contended and what was published. But he says there was, and he says he was out there to try to catch people that were leaking information out of the police department. That really strains my mind, to figure out how that could be the case, but that's what the jury apparently found was the case. I can't say they are not justified in doing that, just because it didn't add up to me. I wouldn't see where his conduct would be such that would catch somebody that was squealing on the police. I mean, if that was his purpose, it just seems incredible to me that he would go about it the way he did, but the jury apparently bought it, and I can't say in doing so they acted on something that was not supported by the record, because I think it was. I don't think he was his own accuser. I don't think I can direct a verdict on that ground. I think there was ample evidence

in the record from which the jury could find, and I think they did find that he had something to say to clear his name; that he had a story to tell, and that he was therefore not his own accuser, because his version was different from what was published.

As to J. Gordon Harris, I think there's ample evidence in the record to support a verdict against him for both actual and punitive damages on both causes of action. He was the administrative arm, so to speak, for the Horry County Police Commission. He carried out their policy. He's the man that conducted the investigation. He's the man that made the initial decision to fire the plaintiff, to not give him a hearing, and he went before the police commission in executive session and told them what his recommendation was, and they followed it and fired him. He had the wherewithall, I think, to give Mr.

Beckham a hearing, as the personnel manual required. He had the wherewithall to give him a liberty interest right to explain his conduct, and he failed on both occasions.

I say give him a hearing. The manual, of course, says the terms of all personnel shall be at the pleasure of the said commission, and they shall have exclusive power to remove any county policeman or other personnel therein, but first such employee shall be allowed a hearing before the commission prior to his removal.

Of course, the question is whether or not his man was allowed a hearing, and I submitted that to the jury. I tried to tell them what the law was so they could make a determination, and I think the verdict indicates clearly that they found that Mr. Beckham was not allowed a hearing before the

commission prior to his removal, as the manual required.

As far as the liberty interest, as far as the property interest, I think Mr. Harris--there's sufficient evidence in the record to support the verdict against him on both of those counts. I think the same goes for the police commission.

Basically, everything Mr. Harris does, the police commission does, because he's acting for them. He's acting through the authority that they give him. They have the right--I don't have the statute right before me, but the statute setting them up is--they have the supreme right to run the county police department. His testimony was that they appointed him to do some things. He does the hiring. I believe they send some names to him and he looks at them and then he takes two or three names and gives them to the police commission, and they reach

a decision, and they follow his recommendations, and obviously, the proof is in the pudding, they followed his recommendation to the letter when he recommended that the plaintiff be dismissed after the investigation that he performed.

Now, the circumstances indicate that if at that time he had offered the plaintiff a hearing, the plaintiff probably wouldn't have accepted it, but I think the jury found otherwise. I think they found he wasn't allowed a hearing, and I think there's evidence in the record to support that.

The evidence is clear, I think, that the police commissioners at that time--that there's sufficient evidence in the record to support the verdict against them as to the property interest claim, and as to the liberty interest claim.

The only thing submitted to the jury on Mr. Dunn was the liberty interest claim. I recognize the fact that he didn't have the right to fire the plaintiff. He had nothing to do with that, being the solicitor, rather than being involved in the Horry County Police Department, but he chose to make certain statements, at a press conference called by him for that purpose. I think the testimony of the reporter was that he called him, they had a very close personal relationship, he called him at home, told him he had something important, to come over. He went over there and he had a press conference, and he released this information concerning why the plaintiff was discharged from his job as the Horry County policeman.

Now, he didn't have a right to have a hearing. A hearing would have been of no importance, because Jim Dunn was the solicitor, and he couldn't have a hearing.

But he could have had or could have used his power as a public official to give the plaintiff the right to explain his side, or exonerate himself. That's what the liberty interest is all about. He didn't do that. He could have called another press conference and said, "Look, Mr. Beckham wants to tell his side, here he is. Let him tell it."

I think that's what he was required to do, something along those lines. He didn't do it, and I think the evidence in this case supports the finding by the jury that he was liable on the liberty interest claim.

APPENDIX F

Excerpts from Petitioner's Brief of Appellee to the Fourth Circuit

(References to the Appellate record have been retained in the event the record is certified to the Supreme Court).

A. BECKHAM DID NOT WAIVE OR FORFEIT HIS RIGHT TO A PRETERMINATION HEARING.

The Act creating the Horry County Police Commission states that the Commission

> shall have the exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the Commission pending such hearing.

Act 21 of 1959, 1959 S.C. Acts and Joint Resolutions 18.

The personnel policy of the Horry County Police Commission speaks in similar language. The Police Commission

> shall have the exclusive power to remove any policeman or other

> personnel (in the Police Department), but first such employee shall be allowed a hearing before the Commission prior to his removal. However, the employee may be suspended by the Commission pending such hearing. (Plaintiff's Exh. #1; J.A., p. 400).

In this appeal, the Defendants claim the jury verdict for Beckham necessarily signifies that the judge submitted to the jury the specific question whether the provisions just quoted created in the Horry County Police Commission a duty to hold a hearing even without a request from the officer terminated. (Appellant's Brief, pp. 10-11). This point is far from true.

The trial court charged the jury that "to allow" means "to permit." (Tr., Vol.

III, p. 536, lines 19-24). Specifically, he instructed the jury

> Allow should be given by you its plain, ordinary, and usual meaning. That meaning has been defined as being permit. And in this context, I charge you that that is the plain ordinary and usual meaning of allow. Permit. It does not guarantee or ensure a hearing prior to termination. It means to permit, to allow a hearing prior to termination.
>
> It means simply, as I just said, to permit the Plaintiff an opportunity to have a hearing before the Commission prior to its termination, ...

(Tr., Vol. III, p. 536, line 19 - p. 537, line 2).

Beckham had taken the position that a hearing was mandatory. In explaining his view of the law, the judge declared

> I don't think (the Commission) had to open the door for a hearing and say, "come on in Mr. Beckham." I don't think they could lock the door and say, "Mr. Beckham, you can't come in for a hearing."

(Tr., Vol. III, p. 501, lines 11-14).

The instruction and the judge's ruling on Beckham's objection demonstrate that the judge plainly informed the jury the holding of the statutory pretermination hearing was not an affirmative duty. The jury was told the Commission did not have to come forward and invite Beckham to a hearing.

If the Defendants thought the instruction unclear or incorrect, they ought to have objected. As the issue went to the jury, the jury might have found a request by Beckham was necessary, but that the circumstances surrounding his discharge denied him even the opportunity to request a hearing.

Beckham was discharged with haste. The Defendants now claim they would have given him a hearing if he had requested one. That protestation loses some force, however, when voiced by a Police Commission member

who testified he attended the session which fired Beckham, when the minutes of that session show him absent. (J.A. Tr., p. 365, lines 1-22; p. 366, lines 2-20; p. 368, lines 2-18). The jury was not required to believe those who testified they would have given Beckham a hearing. If any inference is to be drawn, it must be that they would have refused him a hearing.

In overruling this point on the motion for judgment notwithstanding the verdict, the trial court noted

> Mr. Harris and the members of the Police Commission presumably know that their procedure required that he be allowed a hearing. They knew about that. Nobody said that, "I would have offered him a hearing but I didn't think he wanted one. I though his actions indicated if we offered him one he wouldn't have taken it."

(Tr., Vol IV, Motion j.n.o.v., p. 28, lines 9-14).

The Defendants, finally, have overlooked the actual issue connected with a due process hearing. The statutory hearing is a right separate and apart form the constitutional right to notice and opportunity to be heard. The trial court charged extensively on this constitutional right to due process. (Tr., p. 540, line 13 - p. 543, line 13). It was for the jury to decide whether the circumstances of Beckham's firing afforded him an opportunity to be heard.

The Defendants did not ask for a special verdict on the necessity of a request for a hearing and waiver by failure to request. The jury was able to assess all the circumstances attending Beckham's firing. Their finding in his favor must be interpreted as a finding that, if a request

was necessary, the right was nevertheless not waived because Beckham had no opportunity to request a hearing.

B. (1) THE EVIDENCE SUPPORTS THE JURY'S FINDING THAT BECKHAM WAS DEPRIVED OF A LIBERTY INTEREST BECAUSE HE DID NOT ADMIT MISCONDUCT.

Beckham was fired, according to the press release, because he was an "active participant in furnishing false information to (the Police) Department." (J.A., p. 536, #2). In addition Dunn and Harris told reporter Bob Bloodworth that Beckham had given false testimony at the preliminary hearing. That incorrect information was published in the Myrtle Beach Sun News. Beckham did not testify at the preliminary hearing at all. Furthermore, Beckham was not a conspirator, as implied in the press release.

The Defendants assert Beckham has no disagreement with the Police Department's charge that he furnished false information. They claim that he had become his own accuser. Beckham testified, however, that the allegations of the affidavits were in fact true. (J.A., p. 130, pp. 15-20).

The search warrant affidavit states that Foreman saw Jerry High at the Ship's Wheel Seafood House. That is exactly what Foreman told Beckham. (J.A., p. 134, lines 2-20). There is no false information furnished in that affidavit. And that is what was in the hands of the Chief of Police when he fired Beckham.

The Defendant's reliance on McNeill v. Butz, 480 F.2d 314 (4th Cir. 1973) is particularly inapt. McNeill admitted the charges in a hearing granted him to respond. Before he was terminated, McNeill sought and received a hearing. He appeared personally

and with counsel. By affidavit, McNeill substantially conceded the charges against him. In this present suit, Beckham spent several hours testifying and denied that he furnished false information to the Police Department. (See J.A., p. 184, line 17 - p. 185, line 2).

According to Dunn, Harris, and the initial newspaper reports, Beckham also testified falsely at the preliminary hearing. (J.A., p. 248, line 18 - p. 250, line 5; Pl. Ex. #28, Cols. 4 & 5, J.A., p. 537; Pl. Ex. #29, Col. 4, J.A., p. 538). That false charge Beckham also denied.

It can hardly be said now that an opportunity to confront his accusers could avail Beckham nothing. He has disputed the charges. After listening to testimony for three days and examining the exhibits, the jury believed Beckham.

C. BECKHAM HAD A STATE-CREATED PROPERTY INTEREST IN HIS EMPLOYMENT AS AN HORRY COUNTY POLICEMAN.

Beckham went to trial claiming he had been deprived of property without the due process of law. The judge charged the jury on the meaning of property under the law and explained to them that they might find a property interest had been created in this case. This charge was heard by the Defendants entirely without objection. The jury found Beckham had enjoyed a property interest in his employment and awarded him damages. It is assumed the jury paid heed to the facts and followed the Court's instructions. Crocket Engineering Co. v. Ehret Magnesia Mfg. Co., 156 F.2d 817 (D.C. Cir. 1946).

The court charged

> While property interest protected under the 14th Amendment may take

> many forms, it is clear that to have a property interest, a person must have more than an abstract need or desire for the property. He must have more than a unilateral expectation to it. What he must have is a legitimate claim of entitlement to it. Property interests that receives [sic] protection under the 14th Amendment are not created by the Constitution of the United States. It protects them and says you can't take them without due process of law, but it doesn't create the property interests themselves, just as the land your home is on, the constitution doesn't create that. Any such property interests are created and defined by existing rules or understandings but stem from an independent source, independent of the Constitution, such as state law.

(Charge to Jury, Tr. Vol. III, p. 534, lines 8-22).

The jury, therefore, heard that Beckham must have more than a unilateral expectation of continued employment. He must have a legitimate claim of entitlement to continued employment. That property interest could be created by existing rules

or understandings, independent of the Federal Constitution.

The Defendants do not claim this instruction was erroneous. Indeed the language accuracy expressed the law. See Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

Beckham testified he began service with the Horry County Police Department as a probationary officer, before being awarded permanent status. (J.A., p. 106, lines 9-20). He testified both the Department and he understood that once he was on permanent status, he could be fired only for cause. (J.A., p. 106, lines 13-20). By the same token, Beckham was obliged to give the Department fair notice before resigning. (J.A., P. 106, lines 18-20).

Beckham's testimony, then, was that between the Department and himself, there were existing rules and understandings

that he could be fired only for cause. In further support of Beckham's testimony, Chief Harris's testimony shows no officer had ever been fired or even suspended except for cause. (J.A., p. 284, line 22 - p. 288, line 19). Also, the Police Department Personnel Manual sets out several pages of guidelines for Disciplinary action. (Pl. Ex. 1, J.A., p. 397, 420-423). These Guidelines group certain offenses and describe the disciplinary action that can be imposed with each offense or combination of offenses. Besides these four pages of Guidelines, the Personnel Manual adds three (3) pages of Additional Rules of Conduct. (J.A., pp. 424-426). Cf. Barnett v. Housing Authority of the city of Atlanta, 707 F.2d 1571 (11th Cir. 1983) (regulations limiting power to discharge created property interest).

The Personnel Manual speaks specifically about a probationary period. (J.A., p. 408, Pr. 3). That paragraph makes a point of reserving the right to terminate a probationary employee at any time, "if it is determined that his performance is not up to expected levels." Thus it appears even a probationary employee may expect to continue unless cause exists for his termination.

***

Beckham testified both he and the Police Department understood he would be fired only for cause. Under the principles just set out, it is presumed the jury believed him and found a property interest on that issue. The statements of the Personnel Manual are evidence in further support of the jury's decision. Beckham had an understanding with the Police Department that gave him a legitimate expectation of

continued employment. It was understood he would not be terminated except for cause. In addition, both the statute and the Policy Manual were clear that he must "first" be allowed a hearing "prior" to his removal. The verdict is supported by evidence in abundance.

The trial judge also charged the jury thatthey could find a property interest had been created by the Police Department's adoption of policies and procedures. (Instructions to Jury, Tr., Vol. III, p. 535 lines 14-20). Although he later specifically mentioned the right to a pretermination hearing, his charge does not limit the jury's consideration to the hearing right only. Thus the jury was free to consider Beckham's status as a permanent rather than a probationary employee, to consider the testimony that no suspensions of firings had taken place except for cause, to consider

that Beckham's performance as a police officer would be judged according to the duties and standards of conduct set forth at length in the Personnel Manual, and to observe that both Act No. 21 and the Personnel Manual stated that no employee could be terminated without being given a hearing first.

Again, this portion of the charge was not objected to by the Defendants and is not challenged in this appeal.

The judge noted for the jury that the manual containing these policies and procedures was in evidence. (Instructions to Jury, Tr. Vol. III, p. 535, lines 21-23). Therefore, the jury had before them evidence that Beckham's employment constituted a property interest by its own terms. The judge's unchallenged instruction and the sufficiency of this evidence combine to form

a second ground for upholding the jury's finding of a property interest.

By contrast, the Defendants present only one ground for undoing the jury's verdict. Defendants now attack a single portion of the court's charge on the property interest. The trial judge quoted the jury a passage form Prince v. Bridges, 537 F.2d 1269, 1272 (4th Cir. 1976):

> A constitutional guarantee of due process arises when a public employee is discharged in violation of the procedural rule designed to protect him. In such a situation he has a legitimate property interest to protect.

Frances K. Prince was a governmental employee serving at the "will and pleasure" of Mr. Bridges, subject only to the provisions of a merit plan. 537 F.2d at 1271. The Court wrote in that case also that "Mrs. Prince's 'property' interest in her continued employment was her right to be discharged in accordance with the

statutory procedures provided by the merit plan." 537 F.2d at 1272.

The Court found Mrs. Prince had enjoyed the procedural protections of the statute and thus had not been deprived of her property interest without due process of law.

Prince is direct authority to sustain the verdict for Beckham. Beckham, too, had a statutory protection. His, however was denied. As fired employees, Beckham's and Mrs. Prince's positions are quite opposite. She suffered no infringement of her property right; Beckham did. The verdict for Beckham is sustainable under Prince, which supplies a third ground of affirmance.

APPENDIX G

Seventh Amendment, U. S. Constitution:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

---

42 U.S.C. §1983 (1982):

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Rule 50 of the Federal Rules of Civil Procedure

(b) **Motion for Judgment Notwithstanding the Verdict**

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any

judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgments as if the requested verdict had been directed or may order a new trial.

South Carolina Act No. 21 of 1959 (uncodified)

An Act To Provide For A Police Commission For Horry County And To Make An Appropriation Therefor.

***

SECTION 2. Powers and duties of commission - duties of chief and policemen. The terms of the county police, including the chief, shall be at the pleasure of the commission and the commission shall have exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; provided, however, that such county policeman may be suspended by the commission pending such hearing.

APPENDIX H

A. Cases in which the Fourth Circuit had found insufficient evidence to support a jury verdict.

1. Beckham v. Harris, 756 F.2d 1032

2. Clarkson v. Orkin Exterminating, 761 F.2d 189.

3. Colonial Lincoln-Mercury, Inc. v. Musgrave, 749 F.2d 1092.

4. Jones v. Dodson, 727 F.2d 1329.

5. Jones v. Meat Packers Equipment Co., 723 F.2d 370.

6 Jurgensen v. Fairfax County, Va., 745 F.2d 868.

7. Martin v. Fleissner GMBH, 741 F.2d 61.*

8. Redic v. Gary H. Watts Realty Co., 762 F.2d 1181.

9. Sherril White Construction Company, Inc. v. South Carolina National Bank, 713 F.2d 1047.*

10 Sit-Set A.G. v. Universal Jet Exchange, Inc. 747 F.2d 921.*

* Cases marked with an asterisk belong in both groups.

11. Wellington v. Daniels, 717 F.2d 932.

B. Cases in which the Fourth Circuit found sufficient evidence to support a jury verdict.

1. Abasiekong v. City of Shelby, 744 F.2d 1055.

2. Bly v. Otis Elevator Co., 713 F.2d 1040.

3. Collins v. Straight, Inc., 748 F.2d 916.

4. Evington v. Forbes, 742 F.2d 834.

5. Fleet Transport Company, Inc. v. Mullis, 727 F.2d 327.

6. Lipscomb v. Memorial Hospital, 733 F.2d 332.

7. Management Systems Associates, Inc. v. McDonnell Douglas Corporation, 762 F.2d 1161.

8. Martin v. Fleissner GMBH, 741 F.2d 61.*

9. McElveen v. County of Prince William, 725 F.2d 954.

10. Peacock v. J.C. Penney Company, Inc., 764 F.2d 1012.

11. Raferty v. Scott, 756 F.2d 335.

12. Sherrill-White Construction Company, Inc. v. South Carolina National Bank, 713 F.2d 1047.*

13. Sit-Set, A.G. v. Universal Jet Exchange, Inc., 747 F.2d 921.*

14. Slakan v. Porter, 737 F.2d 369.

15. Tousley v. North American Van Lines, 752 F.2d 96.

Supreme Court, U.S.
FILED
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CLERK

No. 85-292

In The

Supreme Court of the United States

October Term, 1985

THOMAS G. BECKHAM,

Petitioner,

vs.

J. GORDON HARRIS, HORACE JORDAN, WINFRED GORE, ELTON JOHNSON, BOBBY JOHNSON, J.D. FLOWERS, JOSHUA VAUGHT, WORTH LEE, A.B. GRAINGER, BILL WARD, HAROLD ROGERS, and JAMES O. DUNN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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STATEMENT OF THE CASE

This matter arises out of the termination of petitioner from the Horry County Police Department on February 28, 1981 for admittedly falsifying an affidavit and destroying a report of a fellow officer pertaining to the same incident for which the affidavit had been prepared. (App. 20, 39, 46-48)

Petitioner was originally employed by the Horry County Police Department as a patrolman on July 25, 1979. At the time of his employment, and during the events in issue, the Horry County Police Department was governed by the Horry County Police Commission, which was established by statute, (1959 Acts and Joint Resolutions, South Carolina, Number 21) (App. 1). The Horry County Police Commission adopted the Horry County Police personnel policies (App. 2), which remained in effect until the Horry County Police Commission was abolished by County Ordinance on April 16, 1981. (App. 3)

In January, 1981, plaintiff was assigned to the Narcotics Division of the Horry County Police Department as an undercover agent. He remained in this capacity until terminated on February 28, 1981 after voluntarily executing a statement during an intra-departmental investigation in which he admitted that he had executed a false affidavit relative to obtaining a search warrant in a drug bust (App. 20, 39, 46-48) and had destroyed a fellow officer's statement made in connection with the same incident.[1] (App. 23)

---

[1]It was subsequently learned that plaintiff had also executed five other false affidavits which were the bases of the issuance of arrest warrants and additionally filed a false incident report and two false case reports in the same matter.

Upon being interviewed by the Chief relative to these incidents, petitioner did not request a pretermination, or any other, hearing. Rather, when asked what action should be taken, petitioner volunteered to resign. (App. 50)

Subsequent to petitioner's termination, an investigation of the incident was conducted by the South Carolina State Law Enforcement Division. During the course of this investigation some five days after his termination, petitioner gave a statement to the SLED investigator similar to the one previously given to the Horry County Police Department. (App. 27)

Thereafter, on or about March 12, 1981, petitioner was indicted by the State of South Carolina on charges of false swearing, conspiracy and obstruction of justice. He was later tried and acquitted of these charges in April, 1981.

On April 16, 1981, the Horry County Police Commission was dissolved by County ordinance. (App. 3) Thereafter, on April 30, 1981, petitioner, for the first time, some two months after his termination, and two weeks after the dissolution of the Police Commission, sought a hearing relative to his dismissal. Since the Horry County Police Commission had been dissolved, he made his request to the County Administrator and to the Horry County Grievance Committee. These requests were denied on grounds that petitioner had failed to follow the prescribed steps provided in the Horry County personnel policy, i.e., he had failed to submit his request for a hearing in a timely fashion.[2]

---

[2]Horry County personnel policy required the affected employee to request a hearing within thirty (30) days of the event leading to his dismissal. (App. 6). Sixty (60) days had elapsed in this instance before petitioner requested a hearing.

Thereafter, almost two years later, petitioner instituted the instant action.

———o———

ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DID NOT ERR IN REVERSING THE JUDGMENT BELOW.

Respondents have made no attempt to analyze the Fourth Circuit decisions which petitioner contend demonstrates a predeliction on the part of that Court to invade the province of the jury in its appellate review process. Whatever shortcomings the Fourth Circuit may, or may not, have in his regard, its decision in this case is manifestly correct.

There is no dispute as to the relevant facts. Petitioner did falsify an affidavit in relation to a drug bust in which he was a participant. He also invaded the office of the Solicitor, removed a statement from a file on his desk relating to the incident in issue which had been prepared by a fellow officer and destroyed it. He thereafter voluntarily made a full confession of these improper actions to his superiors. As a result he was terminated. Two months later, he unsuccessfully sought an administrative review of his dismissal.

Based on these undisputed facts, petitioner contends that the Police Commission's failure to provide him with an unsolicited, and apparently undesired, administrative hearing at the time of his discharge denied him his con-

stitutionally protected liberty and property rights. There being no dispute as to material facts, the issues presented by petitioner's contentions were solely legal in character and their resolution were within the exclusive province of the Court.

A. THERE WAS NO DENIAL OF PETITIONER'S LIBERTY INTEREST.

1. Petitioner's admission of misconduct negated the liberty requirement of a termination hearing.

Disregarding the fact that petitioner obviously did not desire a hearing at the time of his termination and never sought one until two months thereafter, the fact that he was not provided a forum on the subject did nof impinge upon his liberty rights. The liberty remedy mandated by the Due Process Clause of the Fourteenth Amendment is solely one to provide an opportunity to attempt to refute charges which impact on the reputation and future employability of the accused. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Consequently, so far as his liberty interest was concerned, there must have been a factual dispute between the Horry County Police Commission and petitioner which would have had some significant bearing on his reputation in order for him to have been entitled to a dismissal hearing. *Codd v. Velger,* 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977). There was none.

Petitioner had voluntarily admitted to his superiors that he had falsified and destroyed official documents. He was terminated for this conduct. As noted in *Prince v. Bridges,* 537 F.2d 1269, 1271 (4th Cir. 1976):

> Interpreting its decision in *Roth, supra*, the Supreme Court has held that in cases concerning dismissal of a public employee, '*liberty is not offended by dismissal from employment itself, but instead dismissal based upon an unsupported charge which could wrongfully injure the reputation of an employee.*' (Emphasis added).

Having confessed his guilt, denial of a hearing on the issue did not, as a matter of law, constitute a violation of his liberty interest.

2. Petitioner's subsequent criminal trial cured any due process infraction arising from denial of a termination hearing.

As noted above, the purpose of a hearing, so far as one's liberty interest is concerned, is to provide an employee a forum in which to refute charges unfairly levelled against him which might damage his standing in the community or otherwise impose a stigma on him that forecloses his freedom to take advantage of other employment opportunities. *Board of Regents of State Colleges v. Roth, supra.* Petitioner was provided such a forum in his trial on the criminal charges of conspiracy, obstruction of justice and false swearing, which resulted in his acquittal. This cured any due process liberty defects, had they existed, which may not have been previously afforded him. *Cox v. Northern Virginia Transportation Commission,* 551 F.2d 555 (4th Cir. 1976); *Peppers v. United States Army,* 479 F.2d 79 (4th Cir. 1973).[3]

---

[3]In both of the above cases the Court noted that proceedings held subsequent to termination presented an adequate forum to the discharged employee in which to clear his name and thereby correct any alleged due process violation.

B. PETITIONER HAD NO PROTECTABLE PROPERTY RIGHT IN HIS POSITION AS OFFICER WITH THE HORRY COUNTY POLICE DEPARTMENT.

1. Petitioner was an employee at will.

> To have a property interest in a benefit [a job], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Board of Regents of State Colleges v. Roth, supra.

A property right in employment arises solely in an instance where any employee can be terminated only "for a cause." Under such circumstances a continuing property interest in employment is present until the employer shows sufficient cause for termination. *Arnett v. Kennedy,* 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974). Where, however, employment is terminable at will of the employer, no property right protectable by the due process clause inheres in the employee. *Prince v. Bridges,* 537 F.2d 1269 (4th Cir. 1976).

The Horry County Police personnel policy, which was in effect during petitioner's employment until a month and a half after his termination, provided in pertinent part that:

> Commission may hire such personnel as it deems necessary for the orderly process of law enforcement and shall make all rules and regulations for governing the county police and shall be the final authority upon all matters relative to the conduct of such personnel. *The terms of all personnel shall be at the pleasure of said commission,* and they shall have the exclusive power to remove any policeman or other personnel therein,

> but first such employee shall be allowed a hearing before the commission prior to his removal. (App. 2) (Emphasis added)

This policy parrots the language of the enabling legislation (App. 1).

Under its clear terms, petitioner's term of employment was at the pleasure of the Commission. As such he was an employee at will and, therefore, had no property right in his employment. The fact that the personnel policy provided petitioner an opportunity for a pretermination hearing does not alter this fact. *Lyznicki v. Board of Education,* 707 F.2d 949 (7th Cir. 1983).

Lyznicki involved the demotion, without notice or hearing of plaintiff, a high school principal, to the position of classroom teacher. He thereafter filed suit alleging that he had been deprived of his property interest in the principal's job without due process.

Plaintiff had tenure as a teacher but not as a principal. He contended, however, that the Illinois Code gave him a property right in continued employment as a principal, quite apart from any contract. The Code provided in pertinent part that a principal who had two years or more experience "may be reclassified by demotion or reduction in rank from one position to another for which a lower salary is paid without written notice from the board of the proposed reclassification by April 1 of the year in which the contract expires." 707 F.2d at 952. The Code further provided that within ten days of receiving such notice, the principal may request, and is entitled to receive, a private hearing, and if he is not satisfied with the results, a public

hearing before the Board of Education. Plaintiff apparently requested, but did not, receive such a hearing.

The language used by the Court in denying plaintiff's claim that a right to a hearing conferred upon him a property interest is apposite.

> Although the statute confers a right to a hearing, no standards are prescribed for the board to follow at the hearing; it seems it can reclassify a principal, after expiration of his yearly contract, for any reason or no reason. It is hard to believe that a right to a particular office is created by a statute that allows the 'right' to be terminated in the employer's discretion. Taking the statute as a whole, it makes employment as a principal employment at will, which *Roth* held created no Fourteenth Amendment property right, 408 U.S. at 578, 92 S.Ct. at 2709, and which indeed is the opposite of the lifetime (tenure) employment that *Perry* held was a Fourteenth Amendment property right. *A mere right to notice and hearing, which places no more constraint on the employer's freedom of action than is inherent in having to confront the employee in a public forum, does not change the essential character of the employment relationship as one of employment at will; it does not convert it into a form of tenure employment and thus create a Fourteenth Amendment property right.* 707 F.2d at 952 (Emphasis added).

Also in accord with this analysis are the line of cases construing the hearing requirements of the Comprehensive Employment Training Act (CETA) 29 C.F.R. § 98.26. *Gooley v. Conway,* 590 F.2d 744 (8th Cir. 1979); *Hark v. Dragon,* 611 F.2d 11 (2nd Cir. 1979); *Lake Michigan College Federation of Teachers v. Lake Michigan Community College,* 518 F.2d 1091 (6th Cir. 1975), *cert. denied,* 427 U.S. 904 (1976).

As stated by the Court in *Maloney v. Sheehan,* 453 F. Supp. 1131, 1141 (D. Conn. 1978):

> Plaintiff bases his claim of a property interest on the CETA regulation which required written notice and an opportunity to respond to charges before termination. He argues that the regulation gave him a right to continued employment unless and until these procedures were followed. This argument, however, loses sight of 'the decisive distinction between procedure, and substance', *Shirck v. Thomas,* 486 F.2d 691, 692 (7th Cir. 1973). A law establishes a property interest in employment if it restricts the grounds on which an employee may be discharged. For example, if discharge can only be for 'just cause,' an employee has a right to continued employment until there is just cause to dismiss him. *See Arnett v. Kennedy,* 416 U.S. 134 . . . (1974) (opinion of Rehnquist, J.). But the CETA regulation allowed an employer to discharge an employee for any reason or for no reason at all. *A guarantee of procedural fairness does not establish a property interest.* (Citations omitted) (emphasis added).

See also Hutto v. Waters, 522 F. Supp. 266 (E.D. Va. 1982) and *Bunting v. City of Columbia,* 639 F.2d 1090 (4th Cir. 1981) for similar holdings.

2. Petitioner waived any property interest claims he might have had by failing to request a termination hearing in a timely fashion.

Admittedly the first time plaintiff sought a hearing relative to his termination was on April 30, 1981, two months after his termination, and two weeks after the abolishment of the Horry County Police Commission. By this time, the Police Commission policy had been replaced by the Horry County personnel policy. This policy re-

quired notification by an employee to his department head within thirty (30) working days after the incident that he desired a hearing on his grievance. (App. 6) Petitioner failed to do so. His request was not made until sixty (60) days after the event. By his timing, he was not only thirty (30) days late in his request to the County Administrator for a hearing, but more importantly, made it impossible for his grievance to be heard by his employer, the Horry County Police Commission, which had been dissolved two weeks earlier. Clearly by such dilatory conduct petitioner knowingly waived his right to a termination hearing. *Lawrimore v. American Health and Life Ins. Co.*, 276 S.C. 112, 276 S.C.2d 296 (1981).

3. Had petitioner's employment been terminable only for cause, such cause existed and any property rights inherent in his employment were forfeited.

The Horry County Police Commission personnel policies in its guidelines for disciplinary action listed as dischargeable offenses falsification of records and destruction of property of the County or of a fellow worker. (App. 2) Petitioner admitted to both offenses. Consequently, by his own admissions, he established just cause for his termination.

———o———

CONCLUSION

Petitioner was deprived of neither his liberty nor property rights by Horry County's refusal to comply with petitioner's request for a hearing, which was not made until two months after his termination for admittedly falsifying and destroying official documents.

Respectfully submitted,

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September 17, 1985.

South Carolina Act No. 21 of 1959 (uncodified)

An Act To Provide For A Police Commission For Horry County And To Make An Appropriation Therefor.

* * * *

SECTION 2. Powers and duties of commission—duties of chief and policemen. The terms of the county police, including the chief, shall be at the pleasure of the commission and the commission shall have exclusive power to remove any county policeman, including the chief, but such policeman shall first be allowed a hearing before the commission prior to his removal; *provided,* however, that such county policeman may be suspended by the commission pending such hearing.

———

PERSONNEL POLICIES FOR HORRY COUNTY POLICE DEPARTMENT EMPLOYEES

* * * *

The Horry County Police Department and Horry County Jail are under the direction of the Horry County Police Commission. The Commission may hire such personnel as it deems necessary for the orderly process of law enforcement and shall make all rules and regulations for governing the county police and shall be the final authority upon all matters relative to the conduct of such personnel. The terms of all personnel shall be at the pleasure of the said commission, and they shall have exclusive power to remove any county policeman or other personnel therein, but first such employee shall be allowed a hearing before the commission prior to his removal. However, the employee may be suspended by the commission pending such hearing. The commission shall investigate promptly any complaint made against any policeman for neglect of duty or for misuse of power.

* * * *

GUIDELINES FOR DISCIPLINARY ACTION

* * * *

III. RULES OF CONDUCT

Offenses which will result in disciplinary action include but are not limited to those presented below. Since the violation of some rules is more serious than the violation of others, these rules have been divided into three groups:

* * * *

Group C: First violation may result in discharge.

1. Falsification of records or misrepresentation of material information.

* * * *

4. Willfully causing damage or destruction of equipment or property belonging to the County or to fellow workers.

* * * *

STATE OF)
SOUTH CAROLINA) ORDINANCE NO. 5-81
COUNTY OF HORRY)

WHEREAS, the Horry County Council has determined that it would be in the best interest of the citizens of Horry County to abolish certain Boards and Commissions created by special legislation so as to make County Government more workable within the framework of Act No. 692, of 1975, more popularly known as the "Home Rule Act";

NOW THEREFORE, the Horry County Council in meeting duly assembled ordains and establishes in accordance with the requirements of law as follows:

a. That the following Commissions be, and the same are hereby abolished.

1. The Horry County Development Planning and Tourism Commission.
2. The Horry County Ecological Commission.
3. The Horry County Marketing Commission.
4. The Horry County Police Commission.
5. The Horry County Recreation Board which was established by Act No. 687, of 1973.

b. The functions, duties, and responsibilities of each of the Commissions hereinabove dissolved, shall devolve upon the Horry County Council and/or the Horry County Administrator as may be appropriate and in compliance with the "Home Rule Act", or the general law of this state.

* * * *

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
EMPLOYEE'S PERSONNEL POLICIES

* * * *

GRIEVANCE PROCEDURE

I. PURPOSE

To provide a means whereby any employee who feels that he or she has been subjected to unfair, discriminatory, or abusive treatment may secure a hearing without delay and be assured of a prompt, orderly, and fair response to the grievance or appeal.

II. STATEMENT OF POLICY

It is the policy of Horry County that all employees shall be treated fairly and consistently in all matters related to their employment. When an employee feels that he has not been so treated, he shall have the right to present a grievance or appeal free from interference, restraint, coercion, discrimination or reprisal.

The employee shall be entitled to such time off from his regular duties as may be necessary and reasonable for the presentation and processing of his grievance or appeal without loss of pay, vacation, or other credits.

III. GENERAL

Grievances may include, but are not necessarily limited to, dismissal, suspension, involuntary transfer, promotion, and demotion. Compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it may apply to alleged inequities within a department.

The County Administrator shall appoint a Committee composed of five members to be known as the Grievance Committee. The Committee shall be appointed so that it will produce a cross section of the County's employees. The Committee members shall serve terms of office of three years except that of the members initially appointed, one shall serve for one year, two shall serve for two years, and two shall serve for three year terms of office. Positions which become vacant shall be filled on a interim basis for the remainder of the unexpired term. Whenever a grievance comes before the Committee initiated by or involving an employee of a department of which a Committee member also is an employee, such member shall be disqualified from participating in the hearing.

The Committee shall select a Chairman from among its own members. The Chairman shall serve as the presiding officer at all meetings unless he designates another Committee member to act in his absence.

A quorum shall consist of at least three members and no hearing shall be held without a quorum.

The presiding officer will have control of the proceedings. He shall take whatever action is necessary to insure an equitable, orderly and expeditious hearing. Parties shall abide by his decisions, except when a Committee member objects to a decision to accept evidence, in which case the majority vote of the Committee will govern.

The Committee shall have the authority to call for files, records, and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary.

All grievance appeals and decisions must be in writing and issued within the prescribed time limits.

V. PROCEDURE

Whenever possible, a potential grievance should be resolved by the employee and his supervisor during informal discussions. This provides an opportunity for the employee to tell his side of the story and for the supervisor to explain his position in the matter.

Step I. If any employee who has completed at least six months of satisfactory service has a problem which cannot be resolved through the normal process of informal discussion, he may notify his department head, within thirty working days of learnings of the grievable action, that he wishes to present a formal grievance.

The department head, without delay, shall schedule a hearing with the employee. The employee shall reduce the grievance to writing, and shall also have an opportunity to present his case in person. The department head shall conduct whatever investigations and fact findings he may consider necessary. The employee will be advised of the department head's decision in writing within five working days after the hearing.

Step II. If the employee is not satisfied with the decision reached in Step I, he may, within five workdays after receipt of the first step decision, present his grievance in writing to the County Administrator. Within ten working days after receipt of the employee's appeal, the County Administrator will hold a hearing at which both the employee and the department head will have an opportunity to present their cases in full. He shall conduct such in-

vestigations and fact findings as he may consider necessary. The employee and the department head shall be notified in writing of the County Administrator's decision within five working days after the hearing.

Step III. If the employee is not satisfied with the decision reached in Step II he may, within five working days after receipt of the second step decision, present his grievance in writing to the Chairman of the Grievance Committee. The Committee Chairman shall within three working days notify the Grievance Committee and schedule a hearing. The Committee shall conduct such investigations and fact findings as may be necessary and will give its written decision to the County Council within ten working days after the hearing. If the Council approves the Committee's decision, the decision of the Committee shall be final and shall be transmitted to the employee and the employing department. If however, the Council rejects the decision of the Committee, they shall make their own written decision without further hearing, and that written decision shall be final with copies transmitted to the employee and the employing department. The written decision of the County Council shall be rendered to the parties concerned within ten working days after receipt of the Committee's decision.

App. 8

STATE OF SOUTH CAROLINA

County of Horry

SEARCH WARRANT

Date 1-22-81

Officer T. G. Beckham

EXHIBIT A

AFFIDAVIT

Officers T. G. Beckham and Mike Foreman of the Horry County Drug Squad received information on 1-21-81 from a confidential reliable informant, who has given information in the past which has proven to be true and correct, that Jerry High and others had transported marijuana to and from the Ship's Wheel Seafood House, Little River, S.C. in Horry County, within the last 72 hours and that Jerry High and others had a large amount of marijuana stored in the walk-in freezer of the said Ship's Wheel Seafood House. Further, the confidential informant advised that this stored marijuana was to be moved within the next 24 hours. A Search Warrant was obtained from Magistrate Bellamy to search the Ship's Wheel Seafood House. The above named officers along with other officers, kept the Ship's Wheel Seafood House and surrounding area under surveillance. Officer Mike Foreman did on the morning of 1-21-81 observe Jerry High at the Ship's Wheel Seafood House driving a silver Dodge Van. Upon discovering police officers on the scene, Jerry High fled the area in the said van at a high rate of speed. Officers Beckham and Foreman executed the search warrant by searching the Ship's Wheel Seafood House and found pursuant to the said search warrant, 50 cloth wrapped bales, approximately 3,000 pounds of marijuana on the premises. The confidential reliable informant also furnished, within the same time frame mentioned above, information to police officers that three (3) individuals of Cuban Nationality were staying at the Colonial Inn Motel on Hwy #17, Little River (Horry County), S.C. and that these individuals had participated in loading and/or un-

loading marijuana at the Ship's Wheel Seafood House, within the past 72 hours. Officer Beckham and other officers went to the Colonial Inn and Officer Jack Blackwell observed one or more of the occupants of the motel room flea (sic) on foot upon the officers' arrival at the said motel. That within a five block area at the said motel, the same Jerry High who had been observed fleeing the Ship's Wheel Seafood House was observed with (3) individuals believed to be of Cuban Nationality in the van with Jerry High. One was identified by Officer Blackwell as the person fleeing the scene at the Colonial Inn Motel.

Less than one hour elapsed between the time Jerry High was observed fleeing the Ship's Wheel Seafood House and the time his vehicle was stopped and along with (3) three other occupants of the said van were taken into custody and were transported to the Horry County Jail in vehicles other than those belong to Jerry High. Assistant Chief Gene Graham boarded the said stopped Van previously driven by High and drove it to the Horry County Jail. When the van door was opened Chidf (sic) Graham detected a strong ordor (sic) of Marijuana. The Van was locked and secured at the Horry County Jail by Chief Graham and Officer Beckham. All doors, windows and vents were sealed to assure security of its contents. The said Vehicle being one 1977 Dodge Van, Silver in color, license No. JD 3726, NC 80, registered to one Jerry Lynn High of Shallotte, N.C.

That based on the foregoing information furnished by the confidential informant, and personal observation by the above officers, there is reason to believe that in the said van the property described in "description of property sought" is or may be located and that said property

was used in the commission of, along with other things, the crime of possession of marijuana, with the intent to distribute, and/or conspiracy to smuggle marijuana, and/or would furnish evidence that the said crimes were committed.

Done at Conway, S.C.

This 22nd day of January, 1981.

/s/ (Illegible)

MAGISTRATE

/s/ T. G. Beckham HCPD
AFFIANT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Statement made by Tom Beckham to Glen B. Causey of the Horry County Police Department on February 28, 1981, at 3:45 P.M., at the Horry County Jail, Conway, South Carolina.

Q. Tom, do you understand the Miranda warnings that you have read and signed?

A. I do.

Q. You understand you have the right to remain silent. Anything you say can and will be used against you in a Court of law. You have the right to talk with a lawyer and have him present with you while you are being questioned. If you cannot afford a lawyer, one will be appointed to represent you before any questions, if you wish one. If you desire to make a statement or answer any questions, you have the right to stop at any time. Do you understand that?

A. Yes, sir.

Q. Now, Tom, you want to give me a statement on tape concerning the trouble you are involved in at this time?

A. Yes, sir, I do. I want to get it all out in the open.

Q. Alright, Tom. On January 20th, were you involved in a drug raid up in the Little River area?

A. Yes, sir, it started on the 20th, but the raid didn't occur until the 21st.

Q. Would you tell me what happened up there that morning?

A. Yes, sir. Approaching daylight hours, I was—we had been on a stake-out all night. Mike Foreman and myself. D.E.A. and several Horry County officers had been up there earlier but they had all left. And Mike and I—well, I called Mike on the radio and told him I was coming to the car because I wet and cold and I had to dry out just a minute.

Q. Alright, now. What particular place were you watching?

A. Watching the Ship's Wheel Restaurant.

Q. Up on Highway 17 near the State line?

A. Yes, sir. In Little River, I met Mike back at what we termed on the radio as "the corner" which is the South corner of where the Welcome Center parking lot meets the highway, which is . . . from there you could view the Ship's Wheel Restaurant. I went back to the car and we were sitting in the car and I was sitting in the front seat looking towards the Restaurant and Mike was sitting in the back seat and we were sitting there talking, and a black truck pulled up beside us. And I turned to see who was in it and there was this Cuban-looking fellow sitting in the passenger seat and somebody I didn't know in the driver's seat—Caucasion male, approximately late 30's, early 40's.

Q. Now, this was at the Welcome Center?

A. Welcome center parking lot. And Mike asked me who was there because he couldn't see from where he was because he was slumped down in the car. I described the truck to him. Just a second later, the truck drove off. Mike, without even looking at the truck, told me that the

truck I had described was Jerry High's brother. So a few minutes later, another car pulls up—I don't even remember the description. I remember it was a fairly small car —a black male in it. And he asked me where was Mike. And I acted like I didn't know what he was talking about because he couldn't see Mike and I didn't want him really to know what was going on up there. And he said, "Ya'll painted your car, hadn't you?" And I said—I still acted like I didn't know what he was talking about. And he said, "Is Mike in the car?" And he gets out and walks over there and said, "Yeah, there you are." And he gets in the car and introduces himself to me as "Buzzard" like in the bird. And he started talking to Mike, and he said, "Ya'll waiting on a shipment of marijuana. That truck's been rerouted and went to Calabash." And Mike said, "Yeah, how do you know it?" He said, "It's just the talk. Everybody knows your cars. They have got descriptions and license tags on all ya'll's cars. There's people that tell them." About that time, this blue truck came by on the highway and this fellow "Buzzard" pointed it out and said, "There goes Bobby Gore." And that was the only time I had seen Bobby Gore's truck that day. Hadn't seen it before or afterwards. I didn't even know Bobby Gore. As a matter of fact, besides hearing his name, I didn't even know Jerry High. So, anyway after a few minutes more conversation, he left. And were were sitting there and sat there about fifteen or twenty more minutes. And this telephone truck pulls up in the parking lot of the Ship's Wheel and a guy gets out with this paper in his hand—yellow or white or what—he gets out and walks up to the front door like he was trying to get somebody to the door and walked around, looked over the fence and the back and was looking at the ground a lot. And Mike was talking

about, "He's in on it. He's in on this. I know he is." So the guy gets back in the truck and goes back over to the Welcome Center and uses the phone. Goes inside first, and then comes back and uses the phone. So this time, after he leaves, I told Mike, I said, "Look, are we going to sit here all day and watch this, or are we gonna—since you got probable cause from your informant, are you going to go ahead and get a search warrant? No sence (sic) sitting here all day since Buzzard tells us it's already gone." So he decides to get a search warrant. I got back in the woods. I went back over in this little chicken coop over there. It was the only dry place I could find and I was wet. So I sit in this chicken coop. About an hour to forty-five minutes later, Mike calls me on the radio and tells me to meet him at 'the corner". I go back over and meet him at the corner, this is the Welcome Center Parking lot; we get in the car and he hands me a search warrant. I look over the search warrant as he was driving and we go over there and he says, "Be careful now, this Cuban . . ."—which he mentioned earlier—a Cuban with his machine gun, ten murders and all this kind of stuff—was running around. I was still scared because of this Cuban fellow that was supposed to be there. So I got out of the car with my shotgun and leaned it against the wall on the porch and took the search warrant copy I had and stuck it up in the screen, on the screen door where the spring attaches to it.

Q. At that time, nobody was in the yard of the Ship's Wheel—no vehicles?

A. Nobody but Mike and I. Nobody had been there besides that van that I saw—that telephone company van.

So, as soon as I cut the lock off the door, I looked at Mike and hollered "Bingo. There it is." And he takes a look and he sees all these bails of marijuana. And he says, "I'm gonna get us some back-up." So he goes back down, gets his radio, tries to call the County, and he can't reach them. Cussed about the radio not working, so he switched over and called North Myrtle Beach and tells them, "10-33. We need some help up here. Notify the County and notify Buddy Fowler and tell him to come on up." So I went to one side of the yard with my shotgun, he went to the other side. Like I said, he was still (sic) us to watch out for this Cuban guy. And he said, also, that these people might come back to get this dope; that is a bunch of dope. So a few minutes later, I started hearing sirens and a few minutes later a North Myrtle Beach unit arrives. So Mike hollers, "Here's a bunch of Cubans here. They took off running on foot and vans. One of them turned sideways trying to get out of the parking lot—about flipped it over." Well, anybody looked hada' seen there was no tracks in the parking lot besides ours and the telephone company van. I looked at Mike and he kinda' shook his hand like he didn't want me to say anything. I walked over to him, and he said, "You know. They coming up here with these blue lights. I don't want to make them mad like we were calling a false call or something." Then he starts hollering about, "Let's spread out and see if we can't see some of these vehicles" or something. He was still harping about all the vans up here and he knows who they are and we are going to get warrants on them. I said, "Mike, what in the hell are you talking about?" He and I were talking then and he motioned me over there and he said, "Look. Just let me handle this, Motrow." That's what he called me all the time—Motrow. He says, "I know what I'm do-

ing. We're gonna smoke out these boys—the people that's responsible for all this. We couldn't catch them here at the scene; we're gonna smoke them out. This is the way to get them. Let me handle it—I know what I'm doing." I said, "Alright." He said, "Just say what I just said about the van being here and all." I said, "Alright" and so the other units started getting in and they asked me what was going on and I said, "Well, we came up here to get this marijuana and everybody ran from the scene—in the vehicles." So a few minutes later, all the other units started getting in and we blocked off the parking lot and wouldn't let anybody in. And Mike was over there telling this story about how all the vans and all had pulled out, and there was Cubans running around, and one of them had hid in the woods where I just come from and everybody asked me, "What did they look like?" I said, "I don't know; you will have to ask Mike. Mike saw them." And so the conversation came up about some Cubans, which had been mentioned earlier. He had mentioned Cubans that night, that were over at this motel—the Colonial Inn—at Little River. So we decided to go down to see if we could locate these Cubans and talk with them. So Ellis Bellamy and I took Mike's car and Fat Jack—that's Jack Blackwell—and a North Myrtle Beach Policeman went in another car and we went down these to the scene. As we started to pull in, Jack hollers over the radio, "A Cuban just ran from the South end of the building." So Jack Blackwell and I got out and we went back in the woods with a shotgun, looking for this fellow. Couldn't see anybody, so somebody in an unmarked unit—I believe it was you, wasn't it—picked me up, took me back to my car and I started back to the scene—Ellis Bellamy and I did, after we talked to the people at the motel just a second, the manager; he

didn't know the people that we were talking about. So we get back to the motel, I mean Ship's Wheel, and about the time we got, they started hollering on the radio about they had them down there on the road going down to the waterfront. We went back down to the scene and they had this van stopped. Jack Blackwell had three Cubans in his car and Bill Knowles had a fellow in his car. I didn't know any of them. They were going to take them to the County jail and I said, "No, let's—we need to get this thing straightened out. Let's take them to the North Myrtle Beach Police Department." About that time, an order came over the radio to take them to the County Jail. So I was going to go back to the scene to see if I could talk to Mike. I go back to the scene, and as I started back, Bill handed me this drivers license. I didn't pay any attention to it until I got back to the scene. Mike says, "Who have ya'll got down there?" I went to hand him the drivers license and he says, "Jerry High. Come on and let's get the rest of his stuff." Finished loading up the marijuana in the van and we all headed back to the jail. We all got back to the jail and Mike was talking to Buddy Fowler and everybody was talking about this. And they said, "Let's get this van searched" so I went out there and started to open the door to the van and Jim Dunn asked me do I have a search warrant, and I said "No." And he said, "Do ya'll normally inventory-search every vehicle?" I said, "Well, we started a policy but we hadn't really been doing it."

Q. Where was the van then?

A. Parked behind the jail. At which time, Jim Dunn said, "Well, no, let's get a search warrant. Come up

to my office and we'll get up the affidavit for a search warrant." So I came and I told Mike that Jim wanted to get an affidavit for a search warrant. So at this time, he told me to go on over there and get it started. So he comes over—I hadn't been there just a minute. Mike comes over there and sits down at the table—me and Jim and Jim's secretary—the one with the blonde hair. And we sat there and Mike told his whole story and Jim looked at me and said, "Mike saw him at the scene. Can you identify him at the scene?" I said, "I can't identify anybody at the scene. I didn't see anybody that I can identify." And Mike told his story and he called me over to the side and he said, "Just get the affidavit just like I said. I know what I'm doing, Motrow." Rubbing and patting me on the shoulder. Said, "Just let me handle this. I'm in charge. I'll show you how this thing is going to work out —no problem." So we dictated the affidavit and came back over here to the jail and the DEA was here and the man from North Carolina, one of the FBI agents was here, Gary Batten. We were busy talking with him and they had these things where these boats were supposed to be coming up the waterway and everybody was concerned about that. I was wanting to go out with the boats and let Mike handle this thing since he was the one that initiated it. Mike said he had to go somewhere and he wanted to get these warrants up before we get sued for keeping these people in jail. So he told me to take these affidavits and get the warrants up. I went to Judge Johnson and we typed up the affidavit—said something on it—got the warrants up and then we got the search warrant up at the same time using the same affidavit. All we did was on the bottom of each person's warrant, listed down there what part they had played in it—like the Cubans had been mentioned

by the CI and Jerry High's van had been used to transport the Cubans and that we wanted to search the van. But after that, the people were read the warrants. They got out on bond after that.

Q. Tom, in the affidavit of the arrest warrant or the search warrant, was there anything in that that mentioned about them being at the Restaurant when you went up to the Restaurant?

A. In the affidavit, it reads in there that Mike Foreman had observed Jerry High in a van with some Cuban individuals at the scene.

Q. And that was not true, is that correct?

A. No, sir, it was not true.

Q. Did you sign the affidavit?

A. I signed the affidavit. Mike said he wanted me to go ahead and get the warrants up.

Q. But at the time that you signed the affidavit, did you know that was a false affidavit?

A. Yes, sir, I did.

Q. But you signed it anyhow?

A. Yes, sir, I did.

Q. What happened then?

A. Well, like I said, they got out on bond. I told Mike a couple of times that I was worried about doing things this way. Mike said, "Look, I never got you in any problems before. I'll take care of you. No problems gonna be out of this. We're gonna get it all worked out.

We gonna get the people responsible for it. We're gonna smoke them out."

Q. Was there a mention about a key that was found behind the door just inside the jail?

A. Yes, sir. Claude Bellamy brought the key to me I guess about 10:30 that night. Asked me if I knew where they went to—jingled them in front of my face. And I said, "Where did you get these?" He took me back there and told me where he got them. So I took them back there and put them in the lock and they fit the lock.

Q. The lock that came off?

A. Came off the cooler where the marijuana was. And I told Mike that we had the keys and he asked me where I got them from and I said Claude Bellamy found them on the floor. So, Mike called Jack Blackwell and said—I don't know whether he called him or whether he just said that he had talked with Jack Blackwell and that he had told Jack to say he had found the keys. But I think Jack said he wasn't going to say he found the keys.

Q. You say Mike told Jack to say that he found them?

A. This is just what Mike told me—that's hearsay. He said he was gonna call him. He didn't tell me he called him. He said he was gonna call him and talk to him about the keys. I had heard later on—I forgot where I heard it from—that Jack had talked to Mike and Jack said he was not going to say that he had found the keys. I think it was a couple days later—I think it must have been a week or so ago—Bill Knowles came to me and gave me a signed statement to the effect that he had brought Jerry High to the back door and that Jerry High had had his handcuffs

in front of him. And that he had been fumbling around in the car on the way to the station. And he was standing at the back door, he was still fumbling. And something to the effect that he had thrown or had the opportunity to throw—or something like that—to throw something. And Bill didn't remember seeing anything on the floor and he took him on to the booking counter from there. But this same statement—I felt that Bill had mentioned earlier that he hadn't seen Jerry High throw anything and that he was not going to testify that Jerry High threw anything —said he wan't gonna do it.

Q. Do you know if Mike went to Bill Knowles and tried to get Bill to say that he saw he saw him throw the keys.

A. I have talked to Bill since this thing came up and Bill said that Mike had been to him three or four times and that finally he worded the affidavit to the effect that—like I said, that he had the opportunity to throw or maybe tried to throw or something like that—I don't know what all it read. Bill said that there was no way he would testify to it. The only thing it was was Mike had told him he had a air-tight case but he was worried about getting the keys admitted and the only reason he did it was for a pretrial conference while he was going to be out of town. He said he wasn't going to testify on the stand or anything to it.

Q. Who said that?

A. Bill. And that he didn't like the way Mike had approached him. It was kinda like forceful. This same affidavit—I'll tell you now because I have told the Solicitor—I took the affidavit. I felt like Bill was innocent and

that he had been forced into whatever he had put down. I took that affidavit and I've torn it up.

Q. The one that Bill—that you talking about was taken?

A. This wasn't a signed affidavit—it was just a statement for the pre-trial hearing.

Q. That Bill gave?

A. Yes, sir.

Q. And you tore it up?

A. Yes, sir, I've torn it up?

Q. Okay, this past Thursday, did you have a preliminary hearing on this drug case?

A. Yes, sir we did.

Q. And did you testify in the preliminary?

A. No, sir, I refused to testify. I didn't exactly come out and say I'm not testifying to Jim. Mike called me in there a few minutes before the hearing in another room over there across the hall and started to talk to me about I needed to testify this and I needed to testify that and I told him I wouldn't. So we were interrupted, Jim Dunn came and said, "We're getting ready to get started." He called me in the room behind the Court room in the back section where the coffee machine is and he was reiterating again I needed to testify to this and I said, "Mike, I thought this was going to all be straightened out." And he says, "You need to testify to this or we're not going to make the case." And I said, "Fuck the case." So, Mike looked at me real funny like he was disgusted in me and he goes in the Court room. I go in there and sit down. Dur-

ing his testimony, he would be talking and you could tell in there that he was—I don't know whether he was just worried or he was just trying to word it together as he went, but he tried to cover himself but he had already gone too far.

Q. Alright, now did you hear Mike lying on the witness stand under oath?

A. I did, sir.

Q. And you knew he was lying?

A. I did.

Q. Alright, prior to the preliminary hearing, had you told anybody within this department, or anybody else, anything about—that this was a false statement that ya'll made to officers at the Ship's Wheel that morning of the drug bust?

A. I'm sorry, I don't understand your question.

Q. Have you, prior to this preliminary hearing, did you tell anybody that that wasn't the way it happened?

A. No, it wasn't directly after the hearing. Jim tried to get me on the stand a couple of times and asked me what I could testify to and I said, "I can't testify to anything." I wasn't gonna get on the stand.

Q. Alright, when is the first time you mentioned to anybody . . .

A. That the testimony wasn't right?

Q. That the testimony was incorrect.

A. Right after the preliminary, I went to Buddy Fowler and mentioned to him that I didn't like the way things were going. As a matter of fact, we were just com-

ing out of the room there, and I told Buddy Fowler that Mike had lied about what he said up there. When we were still sitting in the chairs right there in the Court room, I turned to Buddy Fowler and said, "He's lying about what he said. I didn't see anything—nor see Jerry High." So we talked a few mintues and then I went to Jim Dunn's office, and I didn't want to just bring it out right then because I wanted to talk to either you or Buddy Fowler or the Chief. So I tried to indicate to Jim not to go any further with it because I wanted to talk with the Chief. I said, "Something's not right, Jim." And I didn't just come right out and say that Mike had perjured. And he asked me "Do you trust him?" I said, "Let's put it like this. Something's not right and I'll talk to you but I want to talk to my Chief. But anyway, I couldn't wait for the Chief because things were already boiling so I came and I started to talk to Buddy Fowler and then I said I would like to talk to the Chief—I like Buddy, I trust Buddy, but I though the Chief should have been involved in it. And then I got to thinking, well, I can't wait any longer, so I went and talked to Buddy Fowler and then Buddy and I went and talked to Jim Dunn. And I told Jim the whole story?

Q. Is there anything else that you want to tell me about?

A. I can't think of anything right now, Buddy. I'm nervous and I'm having—not trouble remembering—I'm just—everything I've told you is true—I'll say that much. If there is anything else that I can think of, I will be glad to bring it out voluntarily.

A. Okay.

/s/ Tom Beckham (L.S.)

SWORN to before me this 6th day of March, 1981.

/s/ Geraldine L. Shelly (L.S.)
Notary Public for South Carolina
My Commission expires 11-16-87

MIRANDA WARNING:

You have the right to remain silent. Anything you say can and will be used against you in a Court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one. If you desire to make a statement or answer questions, you have the right to stop at any time.

This is to certify that the above rights have been explained to me and that I have received a copy of same.

/s/ Tom Beckham
Date March 4, 1981

WITNESS:
/s/ (Illegible)

THE ABOVE MIRANDA WARNING IS ATTACHED TO AND MADE A PART AND PARCEL OF THAT CERTAIN STATEMENT GIVEN BY TOM BECKHAM TO TOMMY FRASER ANR JOHN LEATH OF SLED, UNDER DATE OF MARCH 4, 1981, AND SIGNED BY TOM BECKHAM ON MARCH 6, 1981.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Statement given by Tom Beckham, 100 Oak Street, Myrtle Beach Carolina, at 12:15 P.M. on March 4, 1981, to Tommy Fraser of SLED. Also present was John Leath, Special Agent of SLED.

This statement is taken with any and all knowledge which Tom Beckham will have involving the incident and arrest of Bobby Gore, Jerry High and three Cubans, on January 21, 1981, and also the knowledge he will have in a preliminary hearing held in Conway, South Carolina, of testimony given by narcotic Detective Mike Foreman. The preliminary hearing was held on February 26, 1981.

Q. Mike, if you will just start at the very beginning—I'm sorry, Tom, start at the very beginning and tell me what you know of this incident.

A. We had—this is Mike Foreman and I—Mike had called me at home the day of the 20th, and advised me that we had information from a confidential informant referred to as CI later, it's such a long word, that there was approximately 100 bails of marijuana stored in the Ship's Wheel Restaurant, and that there was another 100 bails coming in that night brought in by a truck—was coming from Holden Beach. We had had information approximately a week earlier of a load of marijuana coming in and the load of marijuana got to the entrance of Little River Inlet—I was watching through the night vision binoculars and it turned and went back out. We didn't have any idea where it went at the time. I went and got Mike—or he picked me up here at the house rather—we went up the

area that evening, I guess approximately 6:00 or 7:00 o'clock at night. On the way he was filling me in on what his CI had suposedly told him. His CI advised him that Jerr High and some Cuban individuals who supposedly were staying at this Colonial Inn Motel in Little River, were involved in it and that his CI was going to be the one driving the truck to bring it down here.

Q. Do you know who the CI was?

A. Well, I've since then found out that the CI is not Mike's CI; it belongs to his DEA CI. Mike was just taking credit for it being his CI giving information.

Q. Do you know what his name is?

A. I don't have any idea. I know Mike at one time had brought up this thing about somebody named "Snow White" but that was just something that the SBI had mentioned to him that somebody was after an informant named "Snow White". I have no idea what the guy's name is. So, as we got on up there, like I said he had filled me in on it. He had mentioned Bobby Gore's name also during the evening. He said that Bobby Gore was supposed to be out of town. He wasn't sure he was involved in it or not and that he was going to get more information later.

Q. Tom, as a result of this information that you have got from Mike Foreman, did you go anywhere on this particular night?

A. I went into the wooded area behind the—between the Welcome Center and the Ship's Wheel—stayed in the wooded area and one time—twice actually—I slipped out of the wooded area and went over to the back porch where these coolers are. And one cooler had a broken lock on

it. So I opened the cooler and just looked around with a flashlight because it was pitch black dark—scared to death because there was supposed to be this Cuban guy there with a machine gun—that's what Mike had been telling us that was supposed to be wanted for about ten murders. And looked inside and I couldn't anything—it had been cleaned out real good, swept and everything, look like it might have even been mopped. But you could still smell marijuana in it real strong. So I advised him on the radio of this. He had, during the evening, wanted to get some other people but he didn't know who he wanted to get up there and I advised him, I said, "Look, Detective Captain Fowler is in charge of us while the Chief's gone. He's in charge of the department, I mean, as far as detectives and all. Why don't we call him." He kinda hesitated but he went to a phone and called him and got them up there. This was previous to the time I went in the woods. So, I sat in the woods the rest of the night. I mean it rained and everything, I was soaking wet, sitting out there. I was scared this Cuban guy might be coming along the edge of those woods. I kept hearing tin banging but I think what it was was wind banging the tin roof on this barn

Q. Mike, what was the purpose of you sitting in the woods?

A. We were waiting . . .

Q. Excuse me, Tom.

A. To see if this truckload was going to come in, which the truck never showed up.

Q. Did you see anyone show up while you were sitting in those woods?

A. Not while I was sitting in the woods, but right at daylight that morning, I had gotten back in the car because I was cold and wet and I was talking the situation over with Mike. And besides a few people pulling in the parking lot of the Ship's Wheel, we were sitting there and this one car pulled up and this fellow by the name of Buzzard—he was supposed to be another informant Mike had —got out and he says, "If ya'll waiting on that truckload of marijuana—which I think you are—it's already gone to Calabash—it didn't come here. Somebody's tipped them off. There's people up here that know ya'll, know your tag number and they giving it out to everybody." So I just looked at Mike and said, "Mike, we gonna sit here all day watching this thing over here or are you going to get a search warrant since you've got this information and all?" So, he said he was going to get a search warrant. But before he left, a telephone company van pulled into the parking lot of the Ship's Wheel, a guy gets out with what looked like a piece of paper in his hand —possibly a work order or something—light colored piece of paper—he got out and walks to the front door of the Ship's Wheel, acts like he's trying to get somebody to the door. Walks toward the back there's a fence there. Looks over the fence, looks all around the ground. Gets back in his truck and he drives over to the Welcome Center. Goes inside just a second, comes out and uses the pay phone and leaves. So this time, Mike decides he's going to get the search warrant. So I go back in the woods and went over to a position where I was trying to watch the Ship's Wheel but I was about to freeze so I got in this old chicken coop along with this manure and everything. It was the only place dry I could find. And, approximately an hour later, he called me on the radio and said meet him at the

corner, which is the corner of the Welcome Center parking lot. I went to the corner, got in the car with him. He had the search warrant. I looked it over, everything looked good on the search warrant. We went back to the Ship's Wheel Restaurant, at which time, I was still scared about this Cuban guy he was telling me about, so I got my shotgun out of the car. Put it up there on the porch where I was going to be and Mike stood by the car. I took a copy of the search warrant and stuck it up in the spring that holds the screen door. Took the hacksaw and cut the lock off the cooler and there was 50 or 51 bails of marijuana. We was supposed to have counted 50 that morning and they counted 51 when they took it to Columbia. But I'd rather have over than under. But he started calling the County jail on the radio but he couldn't reach them so he called North Mytrle Beach and told them to get us some help up there. So a few minutes later, we started hearing sirens and everything and they started pulling up. So Mike starts hollering about all these Cubans that had been up there with machine guns and these people in the vans that had just left—one of them turned sideways. And you could look in the parking lot and tell that nobody had been in the parking lot besides us and the telephone truck.

Q. Tom, had anybody been there—had any Cubans been there?

A. No, there was no one there.

Q. Had you seen Jerry High there?

A. No.

Q. Had you seen Bobby Gore there?

A. No. At this time, I looked at Mike and said, "Mike, what in the fuck are you talking?" And Mike just

kinda waived me over to the side and said, "Look, we've got all these people up here with their sirens going and I don't want them to be mad at me." And then he flagged me back over there again, he says, "Look, I know what I'm doing, just let me handle it. I'm in charge. I've never let you astray. There's people that tipped them off and there's big people involved in this thing and we're going to smoke them out." So I figured at the time he knew what he was doing and he said just go along with so when people asked me about the van—the other officers there—I said, "Mike saw the vans. I hadn't seen any vans." And then I think Bill Knowles—no, it wasn't Bill Knowles—one of the officers from North Mytrle Beach—so I said, "Yeah, we saw some vans, we're gonna get some warrants later to get these people. We not gonna try to make any arrests now." But a few other people asked me and I said, "I hadn't seen anybody. Mike saw them when he came by."

Q. As a result of this information Mike Foreman had given out, were there any arrests made later?

A. Yeah, the part he had told me that night about the Cubans—I figured he was straight on that about the Cubans being there. Ellis Bellamy, a Detective with the County, he and I and Jack Blackwell and some officer from North Myrtle Beach—I don't know which one it was—decided to go see if we could find these Cubans at the Colonial Inn and talk with them. So as we started over there, Jack Blackwell called on the radio and said he had just seen a Cuban running from the back of the Restaurant into the woods. So . . .

Q. The restaurant or the motel?

A. Excuse me, the motel, I'm sorry. So we got out and looked through the woods back there and couldn't find anybody so Buddy Causey picked us up in a car and took us back to the Motel. So Ellis Bellamy and I took that car and went back to the Restaurant and as soon as we got there, they called on the radio that some of the officers down there had spotted the Cubans and were supposedly putting them under arrest. I said, "Oh, hell, what we doing now." So I get to the scene and here's this silver van there and they've got three people in one police car and one person in another police car. So I said, "Look, let's just take them to North Myrtle Beach Police Department because . . . Charles Sendler said, "Is that the van?" I said, "I don't have any idea. I can't identify it." So we took—I told them to take them to North Myrtle Beach Police Department until we got this mess straightened out. So it came over the radio to take them to the County Jail so they headed to the County Jail with them. One of the officers, Bill Knowles, handed me the drivers license and says, "Here's the one in my car." So I took the drivers license and went back up to the Restaurant, and as we drove up in the parking lot, I went to look at the drivers license and its was Jerry High's drivers license, which—I don't whether it was just that the Cubans had jumped in the van with him or anything—it was just a coincidence that they had caught the Cubans with Jerry High and it kinda fell along with Mike's story. So I gave Mike the drivers license and he just looked at me like I had slapped him in the face, and said, "Let's go on to the jail." As we got to the jail, Mike said, "Look . . . on the way rather, he said, "Look, just go along, I know what I'm doing. I've never led you wrong." He was just telling me the same thing he told me earlier. Said, "We've got some people

we got in jail. We gonna have to go ahead and get the warrants on them, get them on bond. We'll get it all straightened out. But we've got to go along with the story because we've got to smoke these people out." So Mike had been back there for nine months and ten years in law enforc ment, I figured he knew what he was doing.

Q. Tom, how long have you been a member of the narcotics squad?

A. About two and one-half weeks.

Q. How long have you been in law enforcement all total?

A. Well, two separate years with Myrtle Beach and then a year with the County.

Q. Now on your way to the jail, Mike Foreman had given you some type of indication that you should fabricate some kind of story as to what has happened—the reason these people were under arrest?

A. No, he came up with the story and told me to just go along with with it—that the people had been there and all that stuff.

Q. That the people—Jerry High and the Cubans—had been there and told you to go along with it?

A. Yes, sir.

Q. Had they been there?

A. No, sir, they hadn't been there.

Q. Had not been there.

A. No, sir, had not been there.

BY JOHN LEATH:

Q. How about Bobby Gore? Did you see Bobby Gore there or see him anywhere?

A. Well, the only time we even anything to indicate him being there was when this informant was telling us about the marijuana going to Calabash, he pointed out a truck going by on the road, this blue Ford pickup truck, and said, "There goes Bobby Gore. He just left the Restaurant."

BY MR. FRASER:

Q. Who pointed that out?

A. This informant—Buzzard.

Q. Buzzard pointed the truck out?

A. Yes, sir.

Q. Did ya'll see a pickup truck of that description pull into the . . .

A. No, there's was no pickup truck or anything—the only vehicle that pulled into that parking lot was the telephone company truck.

Q. Continue on.

A. We got back to the jail, and there was so much commotion going on. People out there with the marijuana and people running around the jail—just everybody gone crazy. So, Mike says, "We've got to get that van searched, Tom. We've got to get the van searched." So I was going to do an inventory search on it. As a matter of fact, I had already opened the door and the Solicitor walked up and said, "Do ya'll do that on all vehicles?" And I said, "Well,

they've just started a policy where they inventory any seized vehicle." So he said, "No, let's do it with a search warrant. Come to my office and we'll get up an affidavit." So I told Mike that they wanted to get an affidavit and search warrant to search the van. So I started over to the Solicitor's office and Mike came over with me. And we all got to the Solicitor's office, Jim Dunn and one of his secretaries—I don't know what her name is—and Mike and myself.

Q. About what time of day was this, Tom?

A. Probably 2:00 o'clock by this time. I'm not sure. I don't have any idea . . .

Q. That would be 2:00 P.M.?

A. Yes, sir. So, Mike tells his story in the presence of all of us right there in the Solicitor's office. And he called me to the side and said, "Just get it worded just like that—to that effect." And he said, "Like I said, everything will be cool. We'll get all this stuff straightened out. We just got to go along with it for now." So the Solicitor and I took the story that Mike had just given us and worded the affidavit.

Q. Was the story that Mike had just given—was it the truth or was it a lie?

A. It was the same thing that Mike had told me on the way back. It was a fabricated story. So as we got back—got through dictating the affidavit, he had got in notes. So I took all this over to the DA, all these notes. And we typed up the affidavit for the search warrant. And for each individual person, we added a little bit to the bottom of the affidavit and made that the affidavit to each

person's arrest warrant. So, I told Mike that we needed to go ahead and get this stuff done. I didn't have no idea that I was gonna have to be the one to end up signing all this stuff. It was Mike's idea and I was hoping he was going to sign it. But DEA and Customs and the SBI and a few others that had a bunch more boat loads of marijuana and they had one coming up the waterway and everybody had to leave. And Mike told me before he left, "Get these warrants signed so we can get this people on bond so we can get this thing cleared up. So me, like a dummy, I signed these affidavits for these warrants. Got the people on bond.

BY MR. LEATH:

Q. Let me ask you a question, Tom. When ya'll were at the Solicitor's office, you and Mike—and ya'll were there with the Solicitor and his secretary—one of his secretaries —Mike—did the secretary take the notes of what ya'll were going to put in the affidavit so you could remember it?

A. He just told everybody—told all four of us—told the three of us and himself—he told his story and then before he left, he called be (sic) aside and said, "This is the way. Just get it worded just like that and everything will be alright."

Q. But there wasn't any notes made—you don't think the secretary took any dictation or anything about the story that Mike had made up and then he came back later and told you to tell them that again and then ya'll get the warrants?

A. No, I think she was just listening as it went along and Jim just sitting back—you know how he kinda lifts his head back and thinks.

Q. You don't know which one of the girls it was?

A. It's the light-headed girl that sits back in Roy Luke's office. Has her desk back there. I can't remember her name right now.

Q. Rene'?

A. I think that's her name, yes. But he didn't come back. He just called me to the side before he left the office. He didn't come back to the office.

Q. But while ya'll were at the office with the Solicitor and the secretary, he ran through this fabricated story or whatever and then you later got with the girl or whatever and wrote up the thing.

A. With her and the Solicitor. The solicitor specifically asked me "Can you identify anybody that was there" and I said "No." I told him I couldn't. There's no way I could identify anybody.

BY MR. FRASER:

Q. But you did sign all the affidavits and the arrest warrants?

A. I signed all of them.

Q. And the search warrant for the truck?

A. Yes, sir.

Q. But you did this at whose direction?

A. Well, I did it at Mike Foreman's direction because he told me that he had this plan.

Q. And as a result of you signing these warrants, the subjects were placed in the Horry County Jail?

A. They were already in the Horry County Jail when I signed the warrants.

Q. And since that time, they have been released on bond, is that correct?

A. Yes, sir.

Q. The affidavits that were signed were fabricated?

A. Yes, sir.

Q. The subjects that were placed in jail—you have never seen anyone around the Ship's Wheel Restaurant on January 21, 1981?

A. No, sir, I've never seen them before—I didn't know any of them.

Q. You didn't know any of them?

A. No, sir.

Q. Now, let's move up to the preliminary hearing that was held February 26, 1981. Were you present at the preliminary hearing?

A. Yes, sir, I was present at the hearing and just before the hearing Mike had talked to me in this little room right across from the Court room that we were going to use.

Q. Now, whose preliminary hearing was it?

A. It was Jerry High's and Bobby's—it was all of them?

Q. It was all of them?

A. Yes, sir. But the only two people that appeared was this Jerry High and Bobby Gore. That's the only two

Defendants. Bob McInnis was the defense attorney. Just a few minutes before the hearing, Mike was late getting over there and I told Jim "I'm not proceeding with this thing without Mike."

Q. Now, who is Jim?

A. Jim Dunn.

Q. The Solicitor?

A. Yes, sir. I talked to Mike in this little room. He had called me in across the thing over there—across the hall and he said "You gonna need to go along with this thing just the way I've said. It's gonna take longer than what we thought." And at this time I told him "Mike, you talking about perjury." I didn't know what he was gonna do but I said, "You can get ten years for that." And he said, "No, don't worry about it. No problem. Just—we'll get our stories together and there won't be any problem." I told him "Mike, I can't get up there and lie about this on the stand." And about that time the Solicitor opened the door and came in so we had to cut the conversation. So they were talking in there—I forgot what the conversation was, I was way off in thought at the time—I was scared to death. Anyway, we started to go in the Court room and just before they started calling the witnesses, Mike called me back there where they serve coffee and said, "Look, I'm telling you now. You're gonna have to go along with this thing. There's trouble brewing now. If you don't go along with it, there's going to be trouble." And about that time, they called him to go to the stand so he had to leave me standing there. We went in the Court room and Mike took the stand and Mike got up there on the stand and started telling the story just the way he had

fabricated it before. Talking about how he had seen the people there. And he even indicated that I had told him on the radio that I saw Jerry High in a van there and that there was three people that looked like Cubans with him and he had already indicated that I was supposedly 200 yards away in the woods, and I don't know how I could have told him something like that from that distance anyway.

Q. Did you tell Mike Foreman on the radio that Jerry High was there in the van with the Cubans?

A. I had a walkie-talkie and Mike was talking about a place that was six or seven miles away where I was supposed to be talking to him from. Which, if I had, I would have had to be talking on the repeater, which my radio wouldn't reach because I had been in the woods all night.

Q. So you did not tell him?

A. No, sir. The only thing I told him was when he came back to the area, he said, "Motrow" and I said "Go ahead" and he said, "Meet me at the corner" and that's all that was said. There's nothing else said on the radio.

Q. Was the testimony that he gave—was that a lie?

A. The whole thing that he told on the stand was a lie. And the more he talked, the more you could tell it, too. I mean I think . . .

Q. Tom, did you ever testify at the preliminary hearing?

A. No, sir, Jim Dunn, the Solicitor, kept coming to me and asking questions about "what can you testify to", "can you testify to this", "can you testify to that". I said,

"Jim, I can't testify to any of that." And he just looked at me real funny.

Q. And why could you not testify to it?

A. I'm not going to get up there and lie. I had already told Mike I wasn't and I was not going to.

Q. And as a result of Mike Foreman lying during the preliminary hearing—what Judge was used during the preliminary hearing?

A. Judge Olin Blanton—Magistrate in Myrtle Beach.

Q. Judge Olin Blanton?

A. Yes, sir.

Q. And as a result of Mike Foreman lying on the witness stand, did you go see any of your superiors to tell them about it?

A. I told—turned around right there in the Court room and told Captain Fowler, I said, "Captain, I have not said anything on the radio. I have not told Mike I saw Jerry High in that van." I said, "I'm gonna need to talk to somebody." And he said okay and he got to talking with—I don't know whether it was Jim Dunn or one of them over—but I was going to go to Jim Dunn's office—we had an armed robbery trial going on at the time and I was a witness in it. So I stopped there for a couple of minutes—waited around there for a while and went ahead and testified. And then I went to Jim Dunn's office and told Jim—I went to his office first and came back to the armed robbery trial—but when I went to his office. I wanted to talk to my Chief—I didn't want to just come straight out and tell the Solicitor at first because I wanted the

Chief to be aware of it. I thought it was his perogative that he should be aware of it first.

Q. And subsequently, did you ever talk with the Solicitor, Jim Dunn, about it?

A. Yes, sir, I went to his office and I told him, I said—well, when I first went to his office, I said, "Jim, something's not right. I think you need to hold this up right where it is." I said, "I would have been pleased if it had been dismissed at the preliminary but it's gone farther than that. I need to talk with the Chief and I'll be back to talk with." And he started asking me "Do you trust Mike? Do you think he's lying?" And I wouldn't tell him that I thought he was lying. I just said something is wrong. I needed to talk to my Chief. I felt like the Chief was the man in charge of my department and I needed to talk to him first before I came forward with anything." The Chief being out of town, I went to talk with Buddy Fowler. And I talked with him a little bit and I came back to talk with the Solicitor some more and went in the back and I told Buddy Fowler the whole story. That the whole thing was fabricated and he and I went back and told the Solicitor the whole story.

Q. And the Solicitor is aware that the whole case was fabricated?

A. Yes, sir.

Q. Tom, do you have any knowledge concerning a set of keys that were found at the county jail. Claude Bellamy came to me about 10:00 o'clock P.M. the night of the 21st. jingling a pair of keys in his hand and said, "Do you have any idea what these go to?" I said, "Yes, I believe I

do. Where did you find them?" And he took me back there and showed me a place on the floor where had found them. So I took the keys and went back there and put them in this lock that I had cut off the door of the cooler and they fit it.

Q. The door of what cooler?

A. The door of the cooler where the marijuana had been stored.

Q. At the Ship's Wheel Restaurant.

A. Yes, sir. So the keys had been found there at the jail—at the back door. So I told Mike we had found the keys and he said, "Who brought Jerry High in?" and I said "Bill Knowles or Jack Blackwell—one of the two." So—I don't know whether it was Mike—I think it was Mike called Jack Blackwell—and said, "You did see Jerry High throw something at the back door, didn't you. You did see Jerry High throw something at the back door."

Q. Did you hear this conversation?

A. No, this is just what I had heard at a later time—I can't even say where I had heard it.

Q. You didn't hear Mike say this?

A. No, sir, this is just hearsay. This is just leading up to later on—the next thing I know, Bill Knowles was in a few weeks later . . .

Q. Who is Bill Knowles?

A. This is another officer with the Department.

Q. A county police officer?

A. Yes, sir. And he came in there and says, "I'm here to give a statement in reference to the keys." I said, "To the keys?" and he said, "Yeah, the keys that were thrown at the back door." And he said, "I need your case file, I need your report to get the date and time of the arrest and all." Said he was going out of town and he needed this to get it for a pre-trial hearing. Said Mike needed the statement for the pre-trial because he was scared he couldn't get the keys into evidence. Mike had told him he had a real strong case but he couldn't get the keys in there. So a little bit later Mike—excuse me, Bill Knowles brought me back a signed statement in reference to the keys. The only thing he indicated in his statement—it was a real strong statement to get to the point that it was strong to leave questions in somebody's mind—but he told me, he said, "Tom, I didn't see anybody throw anything—I'm not going to say I saw anybody throw anything." Said he needs to get this entered into Pre-trial and he said, "I'm not gonna get up there and lie about this." And he gave me the statement. At a later time, the second time I went back to the Solicitor's office after the preliminary hearing, I took that statement from there because I knew Bill had been pressured into the statement, even though it didn't come outright and . . .

Q. Who pressured Bill into a statement?

A. Well, Mike Foreman had contacted and that's what Bill had told me—that Mike had contacted him. So I took Bill's statement—I took the copies from the file and I destroyed all three of them. I told the Solicitor that I destroyed them and I had threw them in the dumpster behind the jail. But I was not trying to—I guess I just didn't think when I did it but it was a situation where Bill

was just pressured into the thing—Bill's a good police officer. And I don't think he had ever done anything wrong in his life and he was just pressured into this.

Q. Did you read the statement that Bill gave?

A. Yes, sir.

Q. At any time, did Bill Knowles have in his statement that he saw Jerry High throw a set of keys?

A. It said something to the effect that Jerry was left at the back door of the jail facing out and he turned inward and it appeared that he may or could have thrown something and Bill took a quick glance and looked and didn't see anything and took him on away from there. He didn't say anything about he saw him throw anything or saw him throw any keys. Didn't even mention keys to my knowledge, I don't believe. But it did say it appeared he may have or could have thrown something. As a matter of fact he mentioned later on that he had purposely used that word appeared because he didn't want to get up there and lie about it.

Q. Tom, would this be a fair statement to make—that the information that was in the affidavits that you signed—the information in the arrest warrants that you signed involving Jerry High, Bobby Gore and three Cubans were all fabricated?

A. Yes, sir.

Q. And it was fabricated between who?

A. Well, it was fabricated between Mike and I—is where it was fabricated.

Q. The testimony that Mike give at the preliminary hearing that you were present at—and you state that the majority of it also was fabricated.

A. Yes, sir.

Q. And why did you decide to tell the truth, Tom?

A. Well, for the purpose that even though during the first part when all of this first started and everything, he never just came right out and said it but he indicated to me that this mess was going to be straightened out before it even got to the Court room.

Q. He, who?

A. Mike Foreman. And I felt like I had been drug into something. I can't live with myself to get up there and lie on the stand. Now if you do something for an investigation and spread some rumors or something for investigation, that's one thing but when you get up there and lie on the stand—I realize I signed that warrant under oath—but he indicated that this was going to be straightened out before it got to Court and it was all going to be worked out. But I knew that he had lied to me too and I was not going to get up there and lie on the stand I can't live with that—I'm a better man than that.

Q. To your own knowledge, do you know what the disposition of this case is now?

A. This particular case?

Q. Yes, sir.

A. Just from what I read in the paper and all, that it was being dismissed.

Q. And since that time, Tom, has there any administrative action been taken against yourself or Mike Foreman?

A. Yes, sir, I've been terminated and Mike's been fired.

Q. John, do you have any other questions?

BY MR. LEATH:

Q. The only one thing I have is—at the time, when you were with the Solicitor getting up the warrants and everything, did you know then, Tom, that all that was a lie?

A. Yes, sir, I knew it at the time.

BY MR. FRASER:

Q. Tom, do you have anything that you wish to add to this statement that John Leath or myself did not ask you?

A. I had mentioned it to Buddy Causey—I don't know whether it's even proper to bring this up, but the day that I had been in the Solicitor's office all that afternoon, Mike came over here that afternoon, parked right in front and I was getting ready to go somewhere. And I met him at the car and he said, "What were you doing in the Solicitor's office all day?" I said, "I was talking with him about that armed robbery trial" and he told me, he said—he just looked me right straight in the eyes and it felt like icicles coming at me. And he said, "Well, I guess I'm going down but I'm gonna take a couple with me." At the time we had another little thing going on that Mike was involved with and I don't know whether he was referred to that or referred to this particular thing here.

Q. And what would that be?

A. It was a situation where Mike had gotten into a disturbance, I forgot which night it would have been now—it would have been a couple nights earlier than that. It was under investigation—it was just a little incident where he had gotten into a disturbance with a fellow—fired his gun in the air. I don't know, that particular incident right there made me start thinking about him too, I was just wondering about him.

Q. Who was investigating this incident?

A. Buddy Causey.

Q. And he's lieutenant with the Horry County Police Department

A. Yes, sir.

Q. Is there anything else Tom?

A. No, sir. I don't think there's anything else to be said. I've just been truthful with you as much as I can.

BY MR. FRASER: This concludes this statement at 12:50 P.M. on March 4th, 1981.

Tom Beckman, (L. S.)

SWORN to before me this 6th day of March, 1981.
Notary Public for South Carolina

(p 83) A Not the exact words other than the fact that I was being terminated.

Q What do you recall telling anyone about your employment, what you would do at that point in time?

A Nothing at that point in time. Earlier I asked if I should resign. This was after the chief and I first got through with our first conversation, and he said, "no, I don't think so, at this time."

Q Why did you offer to resign, Tom?

A Just like what I told you a few minutes ago, the emotional state, I just—at the time I didn't care what happened.

Q After you were fired, what happened next?

The Court: I didn't understand that. What did he say about attempting to resign?

Mr. Leiter: He said that because of his emotional state—

The Court: Did he say he offered to resign?

Mr. Leiter: Yes, sir, Your Honor.

The Court: But the chief would not accept his resignation?

Mr. Leiter: That's the way I understand it.

The Court: That's the visit in which he terminated you?

The Witness: No, sir, a later time the same day.

The Court: Did you offer to resign before or after

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